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Friday  
August 27, 1993

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# Federal Register

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- When:** September 17 at 9:00 am and 1:30 pm  
**Where:** Office of the Federal Register, 7th Floor  
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 Union Station Metro)  
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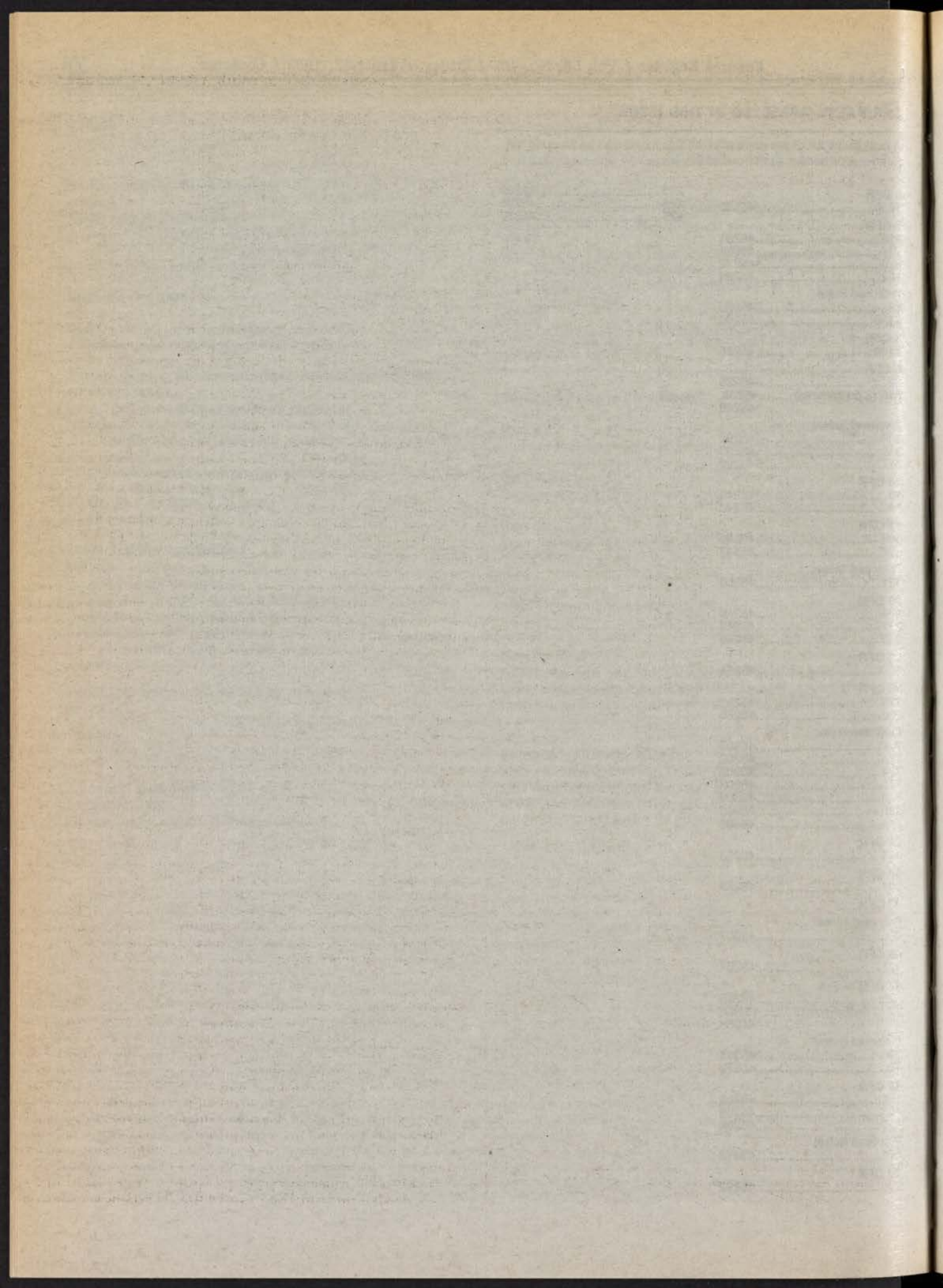
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202-275-1538 or 275-0920.



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# Rules and Regulations

Federal Register

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Friday, August 27, 1993

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV93-916-1FIR]

#### Expenses and Assessment Rates for the Marketing Order Covering Nectarines and Fresh Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule the provisions of an interim final rule, with appropriate changes, authorizing expenses and establishing assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) under M.O. Nos. 916 and 917 for the 1993-94 fiscal year. Funds to administer these programs are derived from assessments on handlers. **EFFECTIVE DATE:** March 1, 1993, through February 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 720-5127; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487-5901.

**SUPPLEMENTARY INFORMATION:** This final rule is effective under Marketing Agreement and Order No. 916 [7 part 916] regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 [7 CFR part 917] regulating the handling of fresh peaches grown in California. The agreements and orders

are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1993-94 fiscal year, which began March 1, 1993, through February 28, 1994. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities. The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the committees are nectarine and peach handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The Nectarine Administrative Committee met on April 29, 1993, and unanimously recommended total expenses of \$3,804,962, with an assessment rate of \$0.1825 per 25-pound box for the 1993-94 fiscal year. In comparison, the 1992-93 fiscal year expenses amounted to \$4,106,247. This represents a \$302,059 decrease in expenses from the 1992-93 fiscal year



with the assessment rate remaining unchanged.

Major expense categories for the 1993-94 nectarine budget include \$330,539 for salaries and benefits, \$1,827,970 for market development, \$1,050,000 for inspection, and \$128,225 for research. Funds in the reserve at the end of the 1993-94 fiscal year, estimated at \$221,704, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met April 29, 1993, and on a seven to two vote recommended total expenses of \$3,853,545, with an assessment rate of \$0.19 per 25-pound box for the 1993-94 fiscal year. Two committee members were opposed to the \$0.19 per 25-pound box assessment rate and requested that it be lowered to \$1.850 per box. Their request was defeated by a four to five vote. In comparison, the 1992-93 fiscal year expenses totaled \$3,925,512 with an assessment rate of \$0.19 per box of peaches.

Major expense categories for the 1993-94 fiscal period are \$330,497 in salaries and benefits, \$1,827,970 for market development, \$1,105,000 for inspection, and \$128,225 for research. Funds in the reserve at the end of the 1993-94 fiscal year, estimated at \$458,948, will be within the maximum permitted by the order of one fiscal year's expenses.

This action was published as an interim final rule in the *Federal Register* [58 FR 33883, June 22, 1993] and provided a 30-day comment period which ended July 22, 1993. One comment was received from the committees.

The committees requested that this final rule correct the assessment rate for nectarines from "\$0.19" to "\$0.1825" as incorrectly stated in the amendatory language. The comment also noted that the interim final rule's supplementary information listed an expense of \$128,225 for sizing research for peaches and the same amount for sizing research for nectarines. The comment noted that no sizing research had been recommended for the 1993-94 fiscal year and that the budget categories should be referred to simply as "research". This change has been made to the supplementary information section for this action. Also, this action clarifies that the rates of assessment are per "25-pound container or equivalent" for each commodity rather than "per box".

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some additional costs

may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is found that finalizing the interim final rule, with appropriate changes, as published in the *Federal Register* [58 FR 33884, June 22, 1993] will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553) because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993-94 fiscal period for the committees began March 1, and the marketing orders require that the assessment rates for the fiscal period apply to all assessable nectarines and peaches handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

#### PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 is revised to read as follows:

**Authority:** 7 U.S.C. 601-674.

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

2. § 916.231 is amended by revising the phrase "\$0.19 per box" to read "\$0.1825 per 25-pound container or equivalent".

#### PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 is revised to read as follows:

**Authority:** 7 U.S.C. 601-674.

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

2. § 917.255 is amended by revising the phrase "per box" to read "per 25-pound container or equivalent".

Dated: August 23, 1993.

**Robert C. Keeney,**  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 93-20869 Filed 8-26-93; 8:45 am]  
BILLING CODE 3410-02-P

#### 7 CFR Part 920

[FV93-920-3-IFR]

#### Expenses and Assessment Rate for Marketing Order Covering Kiwifruit Grown in California

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes an assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1993-94 fiscal year. The Committee is responsible for local administration of the marketing order which regulates the handling of California kiwifruit. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective beginning August 1, 1993, through July 31, 1994. Comments received by September 27, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, Fax # (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, CA, 93721, telephone 209-487-5901; or Mark Hessel, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC, 20090-6456; telephone: 202-720-5127.



**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Order No. 920 (7 CFR Part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California kiwifruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable California kiwifruit during the 1993-94 fiscal year beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of kiwifruit grown in California who are subject to regulation under the kiwifruit marketing order and approximately 650 producers of kiwifruit in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of kiwifruit producers and handlers may be classified as small entities.

The kiwifruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable kiwifruit handled from the beginning of such year. The budget of expenses for the 1993-94 fiscal year was prepared by the Committee and submitted to the Department for approval. The Committee consists of producers and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 14, 1993, and unanimously recommended 1993-94 marketing order expenditures of \$156,150 and an assessment rate of \$0.01 per tray or tray equivalent of kiwifruit. In comparison, 1992-93 marketing year budgeted expenditures were \$152,913, which is \$3,237 less than the \$156,150 recommended for this fiscal year. The assessment rate of \$0.01 per tray or tray equivalent is \$0.01 less than last year's assessment rate of \$0.02. The major budget category for 1993-94

is \$92,095 for administrative, staff and field salaries.

Assessment income for 1993-94 is estimated to total \$100,000 based on anticipated fresh domestic shipments of 10 million trays or tray equivalents of kiwifruit. The assessment income will have to be augmented by \$56,150 from the Committee's reserves to provide adequate funds to cover budgeted expenses. Funds in the reserve at the end of the 1993-94 fiscal year are estimated to be \$109,882. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1993-94 fiscal year began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable kiwifruit handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:



**PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 920 is revised to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new § 920.210 is added to read as follows:

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

**§ 920.210 Expenses and assessment rate.**

Expenses of \$156,150 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of \$0.01 per tray or tray equivalent of assessable kiwifruit is established for the 1993-94 fiscal year ending on July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: August 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-20867 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 932**

[Docket No. FV-92-932-1IFR; Amendment 1]

**Increase in Expenses for Marketing Order 932 Covering Olives Grown in California**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes an increase in expenditures for the California Olive Committee (committee) established under Marketing Order No. 932 for the 1993 fiscal year. This increase is needed to cover additional expenditures for research projects conducted at the recommendation of the committee in July 1993 which were not anticipated when the committee drafted its budget in December of 1992.

**DATES:** Effective January 1 through December 31, 1993. Comments received by September 27, 1993 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Facsimile number (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal

Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, California, 93721, telephone: (209) 487-5901; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC, 20090-6456, telephone: (202) 690-0992.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Order 932 [7 CFR part 932], as amended, regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments applicable to all assessable olives handled during the 1993-94 crop year, which begins August 1, 1993, and ends July 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity

is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are 5 handlers of California olives regulated under the marketing order, and approximately 1,350 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee met on December 7, 1992, and unanimously recommended total expenses for the 1993 fiscal year of \$2,796,000 and an assessment rate of \$25.75 per ton of assessable olives handled. This action was published as an interim final rule in the Federal Register (58 FR 8538, February 16, 1993) and provided a 30-day comment period which ended March 18, 1993. The recommended 1993 expenses and assessment rate were adopted in a final rule and published in the Federal Register (58 FR 33013, June 15, 1993). There were no comments received prior to publication of the final rule.

At a meeting held on July 7, 1993, the committee voted unanimously to increase its expenses by \$23,760 to cover additional production research projects not anticipated by the committee in December of 1992. These increased expenses are in the form of additional funding levels for five research projects currently being conducted. These projects include optimum crop water use, use of nitrogen fertilizers, a study of the parasite Black Scale, a mechanical harvesting rake, and research-related travel costs. This would increase the total budget approved by the Department from \$2,796,000 to \$2,819,760. This action thus amends the June 15 final rule by increasing the committee's authorized 1993 expenses. No change in the assessment rate was



recommended by the committee. Adequate funds are available in the committee's reserves to cover the increase in expenses resulting from this action. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because:

(1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (2) this interim final rule provides for a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

#### List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

#### PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 is revised to read as follows:

Authority: 7 U.S.C. 601-674.

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

#### § 932.226 [Amended]

2. Section 932.226 is amended by revising "\$2,796,000" to read "\$2,819,760."

Dated: August 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 93-20866 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 245a

[INS No. 1618-93]

RIN 1115-AD44

#### Determination of Public Charge for Legalization Benefits, Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

**SUMMARY:** This rule amends the regulations of the Immigration and Naturalization Service relating to applications for lawful temporary residence under section 245A of the Immigration and Nationality Act. Specifically, this rule amends the special rule for determination of public charge to provide that aliens who are self-supporting despite earning income below the poverty level may be admissible without having to apply for a waiver of inadmissibility under 8 CFR 245a.2(k)(2).

**DATES:** This interim rule is effective August 27, 1993. Written comments must be submitted on or before September 27, 1993.

**ADDRESSES:** Please submit written comments in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1618-93 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Jane R. Gomez, Senior Immigration Examiner, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** On July 12, 1989, the Service published a final rule in the *Federal Register* at 54 FR 29449, revising 8 CFR 245a.2(k)(4). The final rule inadvertently added language that previously had been removed from the rule. That language provided that persons described in the special rule for determination of public charge (persons who are self-supporting but who earn an income below the poverty level) may be admissible under 8 CFR 245a.2(k)(2). By making reference to 8 CFR 245a.2(k)(2), the rule made applications for a waiver of inadmissibility under that section a requirement for persons described in the special rule seeking to establish

eligibility for lawful temporary resident status. It was not the Service's intention to require such a waiver. This rule removes the language referring to 8 CFR 245a.2(k)(2) in order to clarify that persons described in the special rule for determination of public charge are in fact admissible without having to apply for a waiver of inadmissibility.

The Service's implementation of this rule as an interim rule, with revision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(1). The reason and necessity for immediate implementation of this interim rule is as follows: This rule clarifies that persons described in the special rule for determination of public charge who are seeking to establish eligibility for lawful temporary resident status do not need to apply for a waiver of inadmissibility to establish such eligibility. Moreover, this interim rule confers a benefit upon eligible persons and does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are entitled to the benefit may apply accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12292, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

#### Lists of Subjects in 8 CFR Part 245a

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100-204, SECTION 902

1. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.



**§ 245a.2 [Amended]**

2. In § 245a.2, paragraph (k)(4) is amended in the first sentence by removing the phrase "under paragraph (k)(2) of this section."

Dated: August 9, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-20881 Filed 8-26-93; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 92**

[Docket No. 93-096-1]

**Horses From Mexico; Quarantine Requirements**

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

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

**SUMMARY:** We are amending the regulations regarding the importation of horses from Mexico to require that such horses be quarantined for not less than 7 days. We are also amending the regulations to provide that quarantine and inspection of all horses imported into the United States from Mexico through land border ports must be carried out in Mexico at facilities approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects. These requirements would help ensure that horses imported from Mexico are not infected with Venezuelan equine encephalomyelitis, and are necessary to protect horses in the United States from the disease.

**DATES:** Interim rule effective August 20, 1993. Consideration will be given only to comments received on or before October 26, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-096-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-

2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products, including horses from Mexico, to prevent the introduction into the United States of various animal diseases.

Under the regulations prior to the effective date of this interim rule, horses from Mexico, except those imported for immediate slaughter, were required to be quarantined at a designated port until they (1) tested negative to an official test for dourine, glanders, equine piroplasmiasis, and equine infectious anemia; (2) tested negative to such other tests that may have been required by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture; and (3) were found free from any communicable disease and fever-tick infestation upon inspection.

Recently, the Government of Mexico reported that Venezuelan equine encephalomyelitis (VEE) has been detected in horses in that country. VEE is an equine viral disease, transmitted primarily by mosquitoes and other hematophagous (blood-feeding) insects, particularly flying insects, and results in a high mortality rate in animals infected with the disease. Its introduction into the United States would pose a significant health risk to horses in this country.

Although tests exist for the presence of VEE in horses, the tests currently available may yield positive results for horses that have been vaccinated for VEE but that are not otherwise affected with the disease. The most efficient method for initial identification of horses that may be infected with VEE is observation of the horses for clinical signs of the disease.

The clinical signs most commonly exhibited by horses affected by VEE are marked fever, depression, and incoordination, followed by death. A horse will usually exhibit signs of VEE within 2-5 days after contracting the disease.

Prior to the effective date of this interim rule, horses intended for

importation from Mexico were not required to be held in quarantine for any specified number of days. This was in contrast to the 7-day quarantine period required for all other horses intended for importation from the Western Hemisphere, except those from Canada and Argentina. The 7-day quarantine period for these other horses is necessary because VEE exists in the countries in question, and 7 days is the length of time necessary to ensure that any clinical signs of VEE manifest themselves. In order to ensure that horses imported from Mexico are likewise quarantined for a sufficient period of time, we are amending the regulations in § 92.308(a)(1) to provide that horses from Mexico are not exempt from the 7-day quarantine period required of certain other horses from the Western Hemisphere.

**Horses Imported for Immediate Slaughter**

Prior to the effective date of this interim rule, horses could be imported from Mexico for immediate slaughter without quarantine if they (1) were accompanied by a health certificate, and were inspected and treated for cattle fever ticks at the port of entry; (2) were consigned from the port of entry to a recognized slaughtering establishment where they were slaughtered within 2 weeks from the date of entry; and (3) were moved from the port of entry in conveyances sealed with seals of the United States government. These provisions were adequate to ensure that the horses were not infected with, and did not transmit, exotic equine diseases existing in Mexico, none of which were transmitted through flying insects.

Because VEE is transmitted primarily through flying insects, however, even horses moving to slaughter could potentially transmit the disease via mosquitoes and other vectors. Therefore, it is necessary to ensure that horses imported into the United States and moving to slaughter are not infected with VEE. We are therefore providing in § 92.326 that, in addition to meeting the previous requirements of that section (except as discussed under the heading "Location of Inspection and Quarantine Facilities," below), horses intended for importation from Mexico for immediate slaughter must be quarantined for not less than 7 days.

**Location of Inspection and Quarantine Facilities for Horses Imported Through Land Border Ports**

Prior to the effective date of this interim rule, § 92.324 of the regulations required that horses intended for importation from Mexico be



quarantined at a port designated in § 92.303. Section 92.303(c) listed land border ports designated as having the necessary inspection facilities for the entry of horses from Mexico. Section 92.323 required that horses offered for entry from Mexico through land border ports be inspected at the port of entry.

However, inspection and quarantine facilities for horses imported into the United States from Mexico through land border ports are not located at the ports of entry. Rather, they are located near the ports listed, but on the Mexican side of the border. This location is necessary to ensure that horses intended for importation from Mexico do not introduce fever ticks or communicable diseases into the United States during the inspection and quarantine process. To make this clear, we are amending the provisions in § 92.303(c) regarding Mexican border ports to remove the statement that they have the inspection facilities necessary for the entry of horses from Mexico, and are amending §§ 92.323 and 92.324 to provide that inspection and quarantine of horses imported into the United States from Mexico through land border ports must be carried out at a facility in Mexico that has been approved by the Administrator. Similarly, we are amending § 92.326 to provide that conveyances used to import horses imported into the United States from Mexico through land border ports for immediate slaughter in the United States must be sealed with seals of the United States Government at a facility in Mexico described in § 92.324, rather than at the port of entry.

#### Construction of Quarantine Facilities

Because flying insects had not been vectors of the exotic diseases of concern of horses imported into the United States from Mexico, the regulations did not require that the facilities used to quarantine horses imported into the United States from Mexico through land border ports be constructed so as to prevent the entry of these insects. As noted above, however, VEE is transmitted among horses primarily by flying insects, particularly mosquitoes. If a horse infected with VEE were brought into a quarantine facility that was not constructed so as to prevent the entry of these insects, a mosquito might enter the facility during the quarantine period, bite the infected horse, then bite another horse scheduled for imminent release from quarantine. The second horse, now infected, might then be released for entry into the United States because it had not shown any clinical signs of VEE during the quarantine period. Therefore, we are amending the

regulations in § 92.324 to require that horses intended for importation into the United States from Mexico through land border ports be quarantined at a facility in Mexico constructed so as to prevent the entry of mosquitoes and other hematophagous insects.

#### Miscellaneous Additions

Sections 114a, 136 and 136a of Title 21 of the United States Code (21 U.S.C. 114a, 136 and 136a) are being added to the authority citation for part 92. Section 114a pertains to the authority of the Secretary to control and eradicate communicable diseases which constitute an emergency and threaten the livestock industry of the United States. Sections 136 and 136a concern additional inspection services and the collection of fees for inspection services.

#### Correction

Prior to the effective date of this interim rule, § 92.308(a)(1) contained a typographical error that erroneously implied that § 92.324 contained provisions regarding the importation of horses from Argentina. We are amending § 92.308 in this interim rule to correct that reference.

#### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to help ensure that horses imported from Mexico do not transmit VEE to horses in the United States.

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

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an impact on the economy of less than \$100 million; will not cause a major increase in costs or

prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Impact Analysis.

#### Executive Order 12778

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

#### Paperwork Reduction Act

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

#### List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

#### PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 is revised to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, 371.2(d).

#### § 92.303 [Amended]

2. In § 92.303, paragraph (c) is amended by removing the words "as



having the necessary inspection facilities".

**§ 92.308 [Amended]**

3. In § 92.308, paragraph (a) introductory text is amended by adding the words "and in § 92.324" immediately after "as provided in this section", and paragraph (a)(1) is amended by removing the words "§§ 92.317 and 92.324" and adding in their place "§ 92.317 and".

**§ 92.323 [Amended]**

4. Section 92.323 is amended as follows:

a. The heading is revised to read "Inspection".

b. In paragraph (a), the first sentence is amended by removing the words "the port of entry" and adding in their place "a facility described in § 92.324".

c. Paragraph (b) is amended by removing the words "ports, designated in § 92.303" and adding in their place "facilities described in § 92.324".

**§ 92.324 [Amended]**

5. Section 92.324 is amended by revising the heading to read "Detention for quarantine.", and by removing the words "at a port designated in § 92.303 until they qualify for release from such quarantine" and adding in their place "for not less than 7 days and until they qualify for release from such quarantine, either at an APHIS facility designated in § 92.303(a) or at a facility in Mexico approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects".

**§ 92.326 [Amended]**

6. In § 92.326, the first sentence is amended by removing "and 92.323" and adding in its place "92.323, and 92.324", and the last sentence is amended by removing the words "the port of entry" and adding in their place "a facility described in § 92.324".

Done in Washington, DC, this 20th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-20862 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-34-P

**Food Safety and Inspection Service**

**9 CFR Part 318**

[Docket No. 83-033F]

RIN 0583-AB20

**Use of Citric Acid as a Color Preserver on Cured Pork Products**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of citric acid as a color preserver on cured pork products during storage. A solution consisting of citric acid, at levels not to exceed 30 percent in water, will be allowed as a spray applied to the surfaces of cured pork cuts, prior to packaging. Use of the citric acid in water solution will be limited to a one-time application. This rule is in response to a petition submitted by the Better Marketing Company, East Rutherford, New Jersey.

**EFFECTIVE DATE:** September 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

**Executive Order 12778**

This final rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under section 408 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over

meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on wholly intrastate operations that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This final rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

**Effect on Small Entities**

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will permit the use of citric acid as a color preserver on cured pork cuts during storage. A solution consisting of citric acid will be allowed as a spray applied to the cured pork cuts prior to packaging. Manufacturers opting to use citric acid in this manner will be required to revise the ingredients statements on product labels to show the presence of citric acid. This would entail a one-time labeling cost of approximately \$1,000 for each product. All small entities producing cured pork cuts will be affected by this rule, if they opt to use citric acid in the manner and at the level as this rule permits. The use of citric acid will be voluntary and any costs associated with a new label applications will be covered under existing approved paperwork requirements of FSIS's prior label approval system. FSIS has no information that would indicate that this rule would affect any of the small entities in a significant manner. Decisions by individual manufacturers on whether to use citric acid on cured pork cuts will be based on their



conclusions that the benefits will outweigh the costs.

**Background**

*Better Marketing Company Petition*

FSIS was petitioned by Better Marketing Company, East Rutherford, New Jersey, to approve the use of a solution consisting of citric acid, at a level of 30 percent in water, to be applied to cut surfaces of cured meat products, prior to packaging, to preserve the product's cured color for up to 3 days.<sup>1</sup> According to the petitioner, a color retention of 3 days is considered essential for retail merchandising of cured meat cuts such as slices and end pieces of smoked hams and picnics. After cured meat is cut, the cut surface fades rapidly, usually within 30 minutes, from pink to a light gray, resulting in economic loss to meat merchandisers, who either trim and rewrap the product or reduce the price.

The petitioner contended that a one-time spraying of a solution containing 30 percent citric acid and water to the surfaces of cured pork cuts would not preserve the product's cure color beyond 3 days nor reverse gray-colored meat to a pink color. Supporting data submitted by the petitioner was based on a series of tests using citric acid alone and in combination with ascorbic acid in solution levels ranging from 10 percent to 30 percent on surfaces of cured pork cuts. The data showed that only the solution consisting of 30 percent citric acid in water provides a cure color retention of up to but not more than 3 days. The data also showed that a 30 percent citric acid level is the lowest level sufficient for up to 3-day color preservation without a concern for masking any indicators of spoilage.

**Current Regulations**

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of citric acid as a curing accelerator to accelerate color fixing or preserve color during storage of cured pork and beef cuts, and cured comminuted meat food

products. Citric acid may be used in cured products or in a 10 percent solution to spray surfaces of cured cuts prior to packaging to replace up to 50 percent of the ascorbic acid, erythorbic acid, sodium ascorbate or sodium erythorbate that is used (9 CFR 318.7(c)(4)). Citric acid may also be used as an acidifier, an anticoagulant, a flavoring agent, and a synergist at various levels in various meat food products (9 CFR 318.7(c)(4)). The Food and Drug Administration lists citric acid as generally recognized as safe (GRAS) for use in foods in 21 CFR 182.1033, when used in accordance with good manufacturing practices.

**Proposed Rule**

On January 5, 1993, FSIS published a proposed rule in the Federal Register to amend the chart of approved substances in 9 CFR 318.7(c)(4) to allow the use of citric acid to preserve the color on surfaces of cured pork cuts. The Agency proposed to permit the one-time spray application of a solution consisting of citric acid, at levels not to exceed 30 percent in water, to the surfaces of cured pork cuts. Although the petitioner requested use of the citric acid and water solution on cut surfaces of "cured meat products," the petitioner's supporting data was based on tests done on cured pork products only. In addition, although the data submitted by the petitioner showed that the 30 percent citric acid level is the lowest level sufficient for up to a 3-day color preservation, FSIS proposed use levels up to 30 percent because some manufacturers may want to use lower levels to preserve the cured color for less than 3 days.

**Discussion of Comments**

FSIS received one comment in response to the proposed rule. The comment was submitted by a food processor. The commenter supported the proposed rule, but requested that the Agency extend the proposed use of citric acid as a color preserver to other species.

FSIS based the proposed rule on supporting technical data for pork products only, submitted by the petitioner. The Agency cannot extend this rulemaking to include species other than pork without technical data to support such use. However, FSIS would consider a petition with supporting data requesting that FSIS approve the application of citric acid as a color preserver to other cured meat products.

After review of the comment and other information, the Administrator has determined that the use of citric acid in cured pork products, as permitted in the rule, will not render the products in which it is used adulterated or misbranded or otherwise not in compliance with the requirements of the Federal Meat Inspection Act. The Administrator has further determined that citric acid would be functional and suitable for the products and it would be permitted for use in cured pork products at the lowest level necessary to accomplish the stated technical effect.

**List of Subjects in 9 CFR Part 318**

Food additives, Meat inspection.

**Final Rule**

For the reasons discussed in the preamble, FSIS is amending 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

**PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS**

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901-1906; 21 U.S.C. 601-695; CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4), the Class of substance "Miscellaneous" is amended by adding at the end thereof the following:

**§ 318.7 Approval of substances for use in the preparation of products.**

\* \* \* \* \*  
(c) \* \* \*  
(4) \* \* \*

Class of substance	Substance	Purpose	Products	Amount
Miscellaneous .....	* * *	.....	.....	.....

<sup>1</sup> A copy of this petition is available for public review in the FSIS Hearing Clerk's Office.



Class of substance	Substance	Purpose	Products	Amount
	Citric acid .....	To preserve cured color during storage.	Cured pork cuts .....	Not to exceed 30 percent in water solution used to spray surfaces of cured cuts, prior to packaging, in accordance with 21 CFR 182.1033. (The use of such solution shall not result in the addition of a significant amount of moisture to the product and shall be applied only once to the product.)

Done at Washington, DC, on: August 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-20873 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-DM-M

#### 9 CFR Part 318

[Docket No. 90-013F]

RIN 0583-AA78

#### Use of Tocopherols and Citric Acid in Various Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of tocopherols and citric acid in the preparation of various meat food products. Tocopherols act as antioxidants and citric acid acts as a synergist to increase the effectiveness of antioxidants. Tocopherols will be allowed in various meat food products at a level not to exceed 0.03 percent based on the fat content and citric acid will be allowed in various meat food products at a level not to exceed 0.01 percent based on the fat content. This rule is in response to a joint petition submitted by Akzo Salt, Inc., and Henkel Corporation.

**EFFECTIVE DATE:** September 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result

in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

##### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678). States may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in case of the imported articles which are not at such an establishment, after their entry into the United States. States that conduct meat inspection programs with respect to wholly intrastate operations must impose requirements at least equal to those imposed on federally inspected products and establishments under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the applicable administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the application of the provisions of this rule, if the

challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The applicable administrative procedures specified in 9 CFR part 335, must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

##### Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The rule will allow the use of tocopherols as alternative antioxidants in various meat food products, and the use of citric acid in various meat food products as a synergist. Manufacturers, both large and small, opting to use tocopherols as antioxidants will be required to revise the ingredients statement on the labels to show the presence of tocopherols and citric acid. However, the use of these substances will be voluntary and any costs associated with new label applications will be covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this rule will not impose new paperwork requirements on the industry. Decisions by individual manufacturers on whether to use tocopherols as alternative antioxidants and citric acid as a synergist in various meat food products will be based on their conclusions that the benefits would outweigh the costs of including these substances in their formulations.

##### Background

###### Joint Petition

FSIS was jointly petitioned by Akzo Salt, Inc., Clarks Summit, Pennsylvania, and Henkel Corporation, Ambler, Pennsylvania, to approve the use of tocopherols as antioxidants and citric acid as a synergist in various meat food products. The petitioners requested that tocopherols be allowed to be added to



dry sausage, semi-dry sausage, dried meats, uncooked fresh pork sausage, uncooked Italian sausage products, uncooked fresh sausage made from beef or beef and pork, uncooked meatballs and uncooked meat pizza toppings at a level of 0.05 percent based on fat content. They also requested that these products, when cooked, as well as brown-and-serve sausage, pregrilled beef patties, and restructured meats, be permitted to contain tocopherols at 0.1 percent, based on fat content.

Tocopherols would not be used in combination with butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), tertiary butylhydroquinone (TBHQ) or propyl gallate, which are other antioxidants permitted in various meat products in accordance with restrictions set forth in 9 CFR 318.7(c)(4). The use of tocopherols would be an effective alternative antioxidant to BHA and BHT in such meat food products.

The petitioners also requested that citric acid be permitted as a synergist in various products to increase the effectiveness of antioxidants, at a level of 0.01 percent based on the fat content.

#### Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of tocopherols as antioxidants and oxygen interceptors in rendered animal fat or a combination of such fat and vegetable fat at a level of 0.03 percent. Section 318.7(c)(4) also allows the use of citric acid as a synergist in lard, shortening, fresh pork sausage and dried meats at 0.01 percent and in dry sausage at 0.003 percent. Citric acid may also be used as an acidifier, an anticoagulant, a curing accelerator, and a flavoring agent at various levels in various meat food products (9 CFR 318.7(c)(4)). Section 317.2(j)(10) of the Federal meat inspection regulations (9 CFR 317.2(j)(10)) requires that when antioxidants are added to products as permitted under Part 318, a statement must appear on the product label identifying the specific antioxidant used and the purpose of such use, such as "BHA, BHT, and Propylgallate added to help protect flavor."

Section 381.147(f)(4) of the poultry products inspection regulations (9 CFR 381.147(f)(4)) permits the use of tocopherols as antioxidants and oxygen interceptors in various poultry products at a level of 0.03 percent based on the fat content. Prominent labeling is also required for poultry products containing antioxidants (9 CFR 381.120). Citric acid is allowed as a synergist in poultry fats at 0.01 percent, and as a curing

accelerator and flavoring agent in various poultry products at various levels (9 CFR 381.147(f)(4)).

The Food and Drug Administration (FDA) lists tocopherols in 21 CFR 182.3890 and citric acid in 21 CFR 182.1033 as generally recognized as safe (GRAS) for use in foods with no limitations other than good manufacturing practices.

#### Proposed Rule

On August 25, 1992, FSIS proposed to permit the use of tocopherols as antioxidants in various meat food products at levels not to exceed 0.03 percent based on the fat content (57 FR 38448). The Agency also proposed to allow the use of citric acid as a synergist in various meat food products at the level of 0.01 percent based on the fat content.

The proposal also stated that the presence and purpose of any antioxidant added to meat and poultry products must be shown in prominent lettering on the product label and contiguous to the product name (9 CFR 317.2(j)(10) and 381.120).

In addition, the Agency proposed to revise the manner in which the entry for malic acid is presented in the chart, thus, requiring that the chart specify the use level (amount) and basis of calculation for malic acid.

#### Discussion of Comments

The Agency received 27 comments in response to the August 25, 1992, proposal. Eleven of the comments were from food processors, three were from trade associations, nine were from flavoring associated industries, and four were from individuals affiliated with the meat and poultry industry.

All commenters supported the proposal to permit the use of tocopherols as antioxidants in combination with citric acid as a synergist in various meat food products to increase effectiveness and flexibility of antioxidant use. Several commenters supporting the proposal stated that: (1) Tocopherols are generally recognized as safe (GRAS) by FDA and pose no safety concern, (2) tocopherols are already being used in some meat products, (3) low levels of tocopherols provide protection to meat products against rancidity, and (4) the proposed use would increase processing options for the meat industry.

The use of tocopherols as antioxidants and citric acid as a synergist have been permitted for a number of years to retard rancidity in a limited number of meat and poultry products listed in 9 CFR 318.7(c)(4) and 381.147(f)(4), respectively. This rule will extend the

use of tocopherols and citric acid in the preparation of various meat food products.

Several trade associations and food processors submitted additional research data supporting the safe use of tocopherols to enhance oxidative stability of poultry, pork and beef products. One commenter stressed the safety of tocopherols (or Vitamin E) by pointing out that some research indicates that tocopherols may be beneficial for reducing the risk of degenerative diseases. The Agency agrees with the consensus regarding the safety of tocopherols as an antioxidant, however, the use level as an antioxidant in meat food and poultry products is the lowest level necessary to achieve the technical effect, and the intent of the current allowance is not to be that of a vitamin supplement.

Several commenters questioned the need for limits on the use level of tocopherols. Three commenters suggested higher limits based on total weight of product rather than on the fat content. Three others suggested no limits, e.g., "sufficient for purpose" within a level consistent with good manufacturing practices (GMP). One commenter stated that basing use level on fat content poses a processing hardship because antioxidants are commonly pre-blended with other ingredients such as seasoning mixes. If the tocopherols' level is limited to the fat content of meat products, the commenter explained that multiple inventories of seasoning blends containing tocopherols would be necessary because of fluctuations in fat content of various meat products. Basing the use level on total weight of product or "sufficient for purpose" would allow greater flexibility for pre-blended mixes containing tocopherols. FSIS believes the problems described can be addressed during formula development and through proper inventory control. The Agency also continues to believe that, although tocopherols are safe, use levels in meat food products should continue to be restricted. This belief is based on a concern for indiscriminate additive use beyond that which has been shown in technical data as necessary to achieve the intended technical effect, i.e., 0.03 percent. Higher levels of tocopherols in meat food products could mask the effects of spoilage or make the product appear fresher than it actually is. Furthermore, tocopherols, like other antioxidants, protect fat from rancidity. Basing the calculation on other than a fat basis would not be technically sound.



One commenter pointed out that some meat products used for further processing may require higher initial levels of tocopherols in order to function properly in the finished product because of their greater surface area, e.g., sliced or diced pepperoni. FSIS is permitting the use of tocopherols and citric acid at levels supported by research data submitted by the petitioner that establish the effective use level. It is the Agency's practice to avoid indiscriminate use of additives. Therefore, the level necessary to achieve the intended effect, supported by the data submitted by the petitioner, is the basis for the decision to continue to set limits for the use of tocopherols and citric acid in meat food products. The limits established by this rule are consistent with use limits established for other antioxidants permitted for similar products and synergists used in combination with antioxidants. The use level for tocopherols, not to exceed 0.03 percent based on fat content, is sufficient for the intended purpose and parallels the use level currently allowed in § 381.147(f)(4) of the poultry products inspection regulations.

The petitioner's request for a 0.01 percent use level for citric acid is consistent with present use levels permitted in the regulations (9 CFR 381.7(c)(4) and 381.147(f)(4)) for the use of citric acid as a synergist, except current use is limited to 0.003 percent in dried sausage and 0.01 percent of the total weight when used in dried meat. The Agency believes that to allow tocopherols in various meat food products at a level not to exceed 0.03 percent based on the fat content and citric acid in various meat products at a level not to exceed 0.01 percent based on the fat content is sound and accomplishes the intended effect based on supporting data. If the Agency is petitioned to amend established limits for these or any other ingredient and

compelling data are provided to support establishing different limits, the Agency will consider such requests for future rulemaking.

One commenter from the flavoring industry suggested that the Agency clarify the definition of tocopherols. FSIS uses the FDA's definition of tocopherols, i.e., it is an antioxidant according to 21 CFR 182.3890. This definition includes all biologically active forms of tocopherol which are either synthetically or naturally derived.

Three commenters expressed support for the elimination of disclosure statements as part of the principal display panel. In general, commenters stated that the information is redundant because it is also provided in the ingredients statement, and product qualifiers do not provide significant benefit to consumers, rather, they engender consumer confusion regarding the significance of such qualifiers. The point that FDA does not have a similar requirement was also made.

Currently, the presence and purpose of any antioxidant added to meat food and poultry products must be shown in prominent lettering on the product label and contiguous to the product name (9 CFR 317.2(j)(10) and 381.120). However, FSIS is reassessing its overall policy regarding prominent labeling. On November 4, 1992, the Agency published a proposed rule in the *Federal Register* (57 FR 52596) to eliminate specific labeling requirements for the prominent disclosure of certain information that qualifies product names. The proposed rule would eliminate those prominent disclosure requirements for product name qualifiers where the inclusion of a substance does not significantly alter the basic identity of the finished product, or where the prominently disclosed information can be found in the ingredients statement. While prominent disclosure of certain product

name qualifiers on product labels would no longer be a requirement, manufacturers would have the option of continuing to use such labeling if they so choose.

After review of all comments, the Administrator has determined that the use of the tocopherols and citric acid in various meat products, as permitted in the rule, will not render these products adulterated or misbranded or otherwise not in compliance with the requirements of the Act. The Administrator has further determined that tocopherols and citric acid would be permitted for use in various meat products at the lowest levels necessary to accomplish the stated technical effect as determined in specific cases.

**List of Subjects in 9 CFR Part 318**

Food additives, Meat inspection.

**Final Rule**

After careful consideration of the comments, FSIS is adopting the proposed rule as published. Accordingly, FSIS is amending 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

**PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS**

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901-1906; 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4) under the Class of substance "Antioxidants and oxygen interceptors," the Substance "Tocopherols" is amended by adding the following at the end thereof:

**§ 318.7 Approval of substances for use in the preparation of products.**

\* \* \* \* \*  
(c) \* \* \*  
(4) \* \* \*

Class of substance	Substance	Purpose	Products	Amount
Antioxidants and oxygen interceptors.	Tocopherols ....	.....do .....	Dry sausage, semidry sausage, dried meats, uncooked or cooked fresh sausage made with beef and/or pork, uncooked or cooked Italian sausage products, uncooked or cooked meatballs, uncooked or cooked meat pizza toppings, brown and serve sausage, pregrilled beef patties, and restructured meats.	Not to exceed 0.03 percent based on fat content. Not used in combination with other antioxidants.



3. In the chart in § 318.7(c)(4) under the Class of substance "Synergists," the entries under the Substances "Citric

acid" and "Malic acid" are revised to read as follows:

**§ 318.7 Approval of substances for use in the preparation of products.**

\* \* \* \* \*  
 (c) \* \* \*  
 (4) \* \* \*

Class of substance	Substance	Purpose	Products	Amount
Synergists (used in combination with antioxidants).	Citric acid .....	To increase effectiveness of antioxidants.	Any product permitted to contain antioxidants as provided in this Part.	Not to exceed 0.01 percent based on fat content.
	Malic acid .....	.....do .....	Lard and shortening .....	0.01 percent based on total weight in combination with antioxidants.

Done at Washington, DC, on: August 23, 1993.  
**Eugene Branstool,**  
*Assistant Secretary, Marketing and Inspection Services.*  
 [FR Doc. 93-20875 Filed 8-26-93; 8:45 am]  
**BILLING CODE 3410-DM-M**

**SUPPLEMENTARY INFORMATION:**

**Background**

In February 1993, the Commission approved the establishment of a regulatory review group (RRG) to conduct a comprehensive and disciplined review of power reactor regulations and related NRC processes, programs, and practices for their implementation. The RRG found two areas in the regulations that may cause confusion regarding a recent amendment to another section of the regulations. On August 31, 1992, the Commission amended 10 CFR 50.71(e) to allow nuclear power reactor licensees to submit FSAR updates either annually or 6 months after each refueling outage. The RRG discovered that 10 CFR 50.54(a)(3) and 10 CFR 54.37(b) still referenced the previous requirement for annual FSAR submittals. This conflict may confuse licensees in determining how often quality assurance program changes and FSAR updates for license renewal should be submitted.

**Description**

The amendments delete the references to the annual submittal of updates in 10 CFR 50.54(a)(3) and 10 CFR 54.37(b). The amended sections reference the regulation, 10 CFR 50.71(e), not the specific requirements of the regulation. Licensees with a QA program description that is common to multiple units or several sites may submit changes to the common quality assurance (QA) program description that do not reduce commitments annually or 6 months after each refueling outage at only one of the sites if the interval between submittals does not exceed 24

months and all applicable dockets are referenced. This would allow licensees with multiple plants to tie the submittal of changes to the common QA program to the refueling outage schedule of only one plant and would eliminate the need for a separate submittal for each plant. The amendment will eliminate the confusion caused by the conflicting requirements in different sections of the regulations.

**Summary of Public Comments**

On May 14, 1993 (58 FR 28523), the NRC published a proposed rule that would delete the references to the annual submittal of updates in 10 CFR 50.54(a)(3) and 10 CFR 54.37(b). The comment period ended on June 14, 1993, and the NRC received five letters of public comment on the proposed rules. Four commenters fully supported the proposed changes; one commenter submitted statements for § 50.54(a)(3) to further clarify the requirements and recommended that NRC revise 10 CFR 54.37(c) to duplicate the reporting frequency of § 50.59(b)(2); one commenter also recommended that NRC consider extending the reporting frequency associated with 10 CFR 50.59(b)(2) to be consistent with the FSAR update submittal. The Commission agrees with the proposed statements for 10 CFR 50.54(a)(3) and has incorporated the statements into the final rule. All other sections of the final rulemaking remain unchanged. Copies of those letters and the NRC staff response to the public comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 50 and 54**

RIN 3150-AE63

**FSAR Update Submittals**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations on power reactor safety in order to consistently apply the requirement that nuclear power plant licensees submit final safety analysis report (FSAR) updates annually or six months after each refueling outage. These amendments eliminate confusion regarding two references to an existing reporting requirement. The final rule does not require additional reporting requirements.

**EFFECTIVE DATE:** September 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Claudia M. Craig, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1281.



**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3) (i) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3051 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0011 and 3150-0155.

**Regulatory Analysis**

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Claudia M. Craig, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504-1281.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" as given in the Regulatory Flexibility Act, or the Small Business Size Standards promulgated in the regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. The rule affects recordkeeping and reporting requirements which have been deemed not subject to the backfit rule and the changes are voluntary relaxations of requirements which are not being imposed upon licensees. Therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects****10 CFR Part 50**

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

**10 CFR Part 54**

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Incorporation by reference, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 50 and 54.

**PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

1. The authority citation for part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.54, paragraph (a)(3) introductory text is revised to read as follows:

**§ 50.54 Conditions of licenses.**

(a) \* \* \*

(3) After March 11, 1983, each licensee described in paragraph (a)(1) of this section may make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report, provided the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted to the NRC in accordance with the requirements of § 50.71(e). Changes to the quality assurance program description that do reduce the commitments must be submitted to NRC and receive NRC approval prior to implementation, as follows:

\* \* \* \* \*

**PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS**

1. The authority citation for part 54 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842).

2. In § 54.37, paragraph (b) is revised to read as follows:

**§ 54.37 Additional records and recordkeeping requirements.**

\* \* \* \* \*

(b) The FSAR update required by 10 CFR 50.71(e) must include any SSCs newly identified as important to license renewal as a result of generic information, research, or other new information after the renewed license is issued. The update must also identify any SSCs deleted from the list of SSCs important to license renewal. This FSAR update must describe how the age-related degradation unique to license renewal of newly identified SSCs important to license renewal will be effectively managed during the period of extended operation. The update must also be accompanied by a justification for deleting any SSCs previously identified as important to license renewal.

\* \* \* \* \*

Dated at Rockville, Maryland, this 16th day of August, 1993.

For the Nuclear Regulatory Commission,  
**James M. Taylor,**  
Executive Director for Operations.  
[FR Doc. 93-20717 Filed 8-26-93; 8:45 am]  
BILLING CODE 7590-01-P



**SMALL BUSINESS ADMINISTRATION****13 CFR Part 108****Loans to State and Local Development Companies Associate Development Company Program**

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the regulations governing the 503 development company program by requiring a probationary period for newly certified 503 companies. It also provides for a class of entities designated as Associated Development Companies which do not have full 503 company status. Insufficiently active existing 503 companies may be converted into this new class of development companies so that they may continue to serve economic development needs in a more efficient manner.

**EFFECTIVE DATE:** This rule is effective August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Allan S. Mandel, Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington, DC 20416, Telephone (202) 205-6485.

**SUPPLEMENTARY INFORMATION:** On September 18, 1992 (at 57 FR 43155) a proposed rule including the changes listed in the summary above was published. Six (6) comments were received and their content was taken into consideration in developing this final rule. SBA is hereby adopting the proposed regulation with one modification indicated below as final.

By this final rule, 13 CFR part 108 is amended by adding a new § 108.507 to provide for an Associate Development Company (ADC) designation to increase program availability in underserved areas by allowing organizations that do not have the interest or ability to be a full fledged 503 company to play a role in program delivery. An ADC is permitted to provide information to potential borrowers and to form a relationship with a fully certified 503 company with which it may contract to do some part of development company loan processing. Only certified 503 companies are eligible to receive SBA guarantees and are responsible for loans made to small businesses with the proceeds of those guarantees. This approach allows maximum flexibility to permit a variety of organizations to assist in program delivery, but at the same time allows SBA to focus its full

regulatory efforts on 503 development companies that are ultimately responsible for processing, making, and servicing loans. An ADC is not subjected to the degree of regulatory oversight necessary for an organization that is responsible for loan making. The only modification from the proposed rule is to change § 108.507-2 to make a specific reference to the ADC application form.

Three of the commentors supported the idea of ADCs, one commentor opposed the concept because of a concern that a 503 company transferred to ADC status would lose the income generated by its existing portfolio. However, the ADC program does not change the definition of inactivity. Under the current regulations, an inactive 503 company may be decertified and lose its 503 loan fee income. The ADC program merely provides an intermediate step for such a company.

The remaining two commentors took no position but raised technical issues. One commentor misinterpreted the requirement that an ADC have experience administering an existing loan portfolio. That requirement applies only where such ADC would contract with a CDC in processing loan applications. Organizations with no existing loan portfolio would be able to participate as an ADC but would not be able to process applications under contract with a 503 company. The other technical questions were related to minor administrative details associated with the relationship of ADCs processing applications for 503 companies. These types of day to day operational issues are not regulatory items so they will be addressed in the operating guidance provided upon implementation.

13 CFR 108.503-2 is amended to provide for a probationary period for new certified 503 companies. If a new 503 company is unable to deliver the 504 program during the probationary period, its exit from the program is automatic. Such development company has the option of transferring to status as an ADC if qualified, which will allow it to continue to provide information to local borrowers while being relieved of the burden of loan delivery. If the development company successfully delivers the 504 program, SBA may provide permanent status under § 108.503. Only one comment was received on this issue and that was supportive.

Lastly, the rule provides for transfer of a 503 company not meeting the activity requirements to a classification as an ADC. Also, a conforming change was

made to 13 CFR 108.503-3(c) in order to implement this change. SBA's goal is to eliminate burdensome regulation of organizations that do not efficiently provide loan delivery while still encouraging avenues for information to reach small businesses. The one comment received on this issue was discussed above.

**Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act and the Paperwork Reduction Act**

SBA has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy cannot attain \$100 million because it addresses the oversight of essentially non-loan producing CDCs. While the creation of this new classification of ADCs has as its goal an increased number of projects due to greater program visibility, such increase is unlikely to result in more than \$40 million because it is unlikely that there will be one additional loan created as a result of the existence of each ADC.

This rule does not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and does not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that this rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of the Paperwork Reduction Act, Public Law 98-115, 44 U.S.C. ch. 35, SBA certifies that § 108.507 imposes a new reporting requirement. SBA has received clearance for this paperwork requirement from the Office of Management and Budget (#3245-0285).

**List of Subjects in 13 CFR Part 108**

Loan programs/business, Small businesses.

For the reasons set forth above, part 108 of title 13, Code of Federal Regulations is amended as follows:



**PART 108—[AMENDED]**

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.503-2 is amended by adding new paragraphs (d) and (e) to read as follows:

**§ 108.503-2 Certification.**

(d) *Probationary period.* All 503 companies certified after August 27, 1993 will be subject to a probationary period of two (2) years from the date of certification. No later than two (2) months prior to the end of the probationary period a 503 company may (1) petition for permanent status under § 108.503, (2) petition for a one time only, one year extension of the probationary period, or (3) petition for status as an Associate Development Company (ADC) under § 108.507. Failure to file a petition prior to the end of the probationary period shall be considered an automatic election of expiration of status under part 108. If the third option is elected, or if no petition is filed, all documents related to funded and/or approved loans shall be transferred to a 503 company in good standing, SBA, or another servicer pursuant to instructions from SBA.

(e) *Transfer of certification to associate status.* Any 503 development company which does not meet the activity requirement of § 108.503-3(c) on average for any two (2) consecutive fiscal years shall be transferred to status as an ADC pursuant to § 108.507. SBA shall provide written notice of such transfer at least ten (10) business days prior to the effective date of such action. Such notice shall inform the 503 development company of the opportunity for a hearing pursuant to part 134 of this chapter. During the period of any proceedings under part 134, the action of the SBA shall remain in effect.

3. Section 108.503-3(c) is revised to read as follows:

**§ 108.503-3 Operational requirements for 503 companies.**

(c) *Levels of activity.* In order to meet the needs of small business in its area of operations, a 503 company shall conduct active operations. For the purposes of this paragraph, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under title V of the Small Business Investment Act to at least two small concerns.

4. A new undesignated centerheading and §§ 108.507, 108.507-1, 108.507-2, 108.507-3, 108.507-4 and 108.507-5 are added to read as follows:

**Associate Development Companies****§ 108.507 Program objectives.**

This section establishes policy and procedures for the designation and administration of Associate Development Companies (ADCs), created for the purpose of assisting in the promotion of the development company programs provided for in part 108. ADCs shall foster economic development in both urban and rural areas by assisting those organizations qualified under § 108.503 to deliver long term, fixed asset financing. SBA shall not guarantee financing by organizations designated under § 108.507.

**§ 108.507-1 Permissible functions of an ADC.**

An ADC shall provide information about SBA programs to small businesses, financial institutions, and others participating in economic development activities, and may contract with a 503 company to aid the 503 company in the provision of financial assistance to small concerns if such ADC meets the staff requirements of § 108.507-2(d) and administers an existing portfolio of loans to small businesses.

**§ 108.507-2 Eligibility requirements.**

Using SBA Form 1849, an applicant shall demonstrate to SBA's satisfaction that it has:

(a) *Status and purpose.* A state charter as a non-profit organization which, at least in part, supports local economic development efforts.

(b) *Management.* Adequate management ability in its board of directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the ADC.

(c) *Board of directors.* The board of directors shall be composed of individuals chosen from the membership by the stockholders or members. Such board shall meet at least quarterly to make management decisions for the company.

(d) *Professional staff.* Each ADC shall have a full-time professional staff and professional management ability. The number of personnel may vary, but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience satisfactory to SBA to market the 503

program. For ADCs contracting with a 503 company to assist in processing a 504 loan, the staff must possess small business lending experience acceptable to SBA. Any contract for these functions, other than contracts for employment of individuals, shall require SBA's prior written approval, shall be approved annually by SBA and shall prohibit self-serving actions which would increase costs to a small business borrower. Compensation under such contracts shall be reasonable and customary for like services by like organizations. Such contracts shall be subject to audit by SBA at no cost to the ADC.

(e) *Management services.* Where an ADC provides management advice and services to small concerns, such services provided pursuant to a contract for other than employment of individuals shall be subject to audit by SBA at no cost to the ADC.

(f) *Financial capability.* An ADC shall have the ability to sustain its operations on a continuous basis from reliable sources of funds. An ADC shall submit a budget or copy of financial statements for its operations which demonstrates that adequate resources will be available to perform the ADC functions.

**§ 108.507-3 Operational requirements for ADCs.**

An ADC shall provide assistance to small concerns pursuant to § 108.507-1, maintain the eligibility requirements set forth in § 108.507-2 of this part, and meet the following operational requirements:

(a) *Records.* The ADC shall develop a system to ensure and document the dissemination of SBA-related information. Documents, or a photographic copy thereof, relating to its operations shall be made available to SBA.

(b) *Reporting requirements.* The requirements of §§ 108.4(c), 108.5(c), (d), (e), and (f) apply to an ADC, and in addition, each ADC shall submit to the SBA an annual report, in duplicate, containing financial statements, and operational and management information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for Preparation of the Annual ADC Report (SBA Form 1850).

(1) The operational and management part of the annual report shall contain an explanation of the ADC's activity and accomplishments for the year then ended and plans for the next year.

(2) In addition to the required Form 1081, personal resumes of new officers, directors and professional staff



employed by the ADC shall be promptly filed with the SBA office servicing the area where the development company's headquarters are located. The requirement for a personal resume and Form 1081 may be waived by SBA if such documents have been previously filed with SBA under a development company program, and no significant changes have occurred.

(c) *Training.* The ADC shall provide evidence that staff members are receiving appropriate training.

**§ 108.507-4 Fees which may be received by the ADC.**

(a) *Charges and fees.* An ADC may contract with a 503 company to perform some or all of the loan packaging and non-legal staff functions related to a loan. Such contract shall specify the responsibilities of the ADC and identify the amount and schedule of compensation to be paid by the 503 company to the ADC. The 503 company shall be solely responsible to SBA for the processing, closing, and servicing of a loan.

(b) *Service fee paid by small concern.* Use of an ADC shall not result in any greater cost charged by a 503 company to a small business concern.

**§ 108.507-5 Oversight and evaluation; suspension and revocation.**

(a) *Operational review.* An ADC shall be subject to an operational review by SBA. The ADC shall cooperate with SBA by making its staff, records, and facilities available.

(b) *Compliance audit.* Each development company shall be subject to compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General pursuant to the Inspector General Act (5 U.S.C. App., section 1, et seq.).

(c) *Revocation, suspension and other corrective actions.*

(1) *Corrective actions.* SBA reserves the right to suspend temporarily the eligibility of any ADC, or to require any other corrective action for a violation of law or SBA regulation, or the terms of any agreement with SBA, or any inability to meet the operational requirements set forth in this part.

(2) *Revocation and appeal of suspensions.* Revocation proceedings and appeals of suspension actions shall be conducted in accordance with the provisions of part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(6) and 134.34.

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company

Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans)

Dated: July 8, 1993.

Erskine B. Bowles,  
Administrator.

[FR Doc. 93-20840 Filed 8-26-93; 8:45 am]

BILLING CODE 8025-01-M

**13 CFR Part 120**

**Business Loan Policy; Loan Making Policy**

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

**SUMMARY:** Under this final rule, SBA is precluded from making or guaranteeing a loan to an applicant under section 7(a) of the Small Business Act (the "Act") if the Agency has incurred a loss (which remains outstanding) in connection with unreimbursed SBA advance payments under the 8(a) program or an earlier section 7(a) or 7(b) loan or guaranty with respect to the applicant (or its predecessor) or to any business controlled by the same person(s) who controlled an applicant on which a loss was incurred.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416. Telephone 202/205-6490.

**SUPPLEMENTARY INFORMATION:** On September 25, 1992, SBA published in the Federal Register (57 FR 44346) a proposed regulation which would prevent SBA from making or guaranteeing a loan under section 7(a) of the Act if the Agency had incurred a loss on an earlier loan. Seven comments generally supportive of the rule were received and they contained several suggestions which the Agency has adopted in this final rule. Accordingly, the final regulation is being promulgated with changes as noted.

Under this final rule, SBA will not provide section 7(a) direct or guaranteed loan assistance to an applicant small business concern if the Agency has incurred a loss from either unreimbursed SBA advance payments in the 8(a) program or on a prior loan under section 7(a) or 7(b) of the Act made to the applicant (or its predecessor) or to any business controlled by the same person(s) who controlled an applicant. This prohibition will apply so long as the earlier loss remains outstanding on the books of SBA. In rare circumstances, in

order to achieve an equitable result, the SBA Assistant Administrator for Financial Assistance or his/her designee would have the authority to waive the application of this rule for good cause shown. For example, it is possible that where a principal of the applicant was involved with another business which received SBA assistance, and SBA suffered a loss in conjunction with that assistance, and such principal was in no way responsible for such loss, a waiver could be granted.

Section 7(a) of the Act deals with business loans made or guaranteed by SBA, while section 7(b) of the Act covers disaster loans made by SBA. Since it is irrelevant whether the earlier Agency loss was incurred under the business loan program or the disaster loan program, this final rule precludes section 7(a) business loan assistance regardless of whether the earlier Agency loss had been incurred under section 7(a) or section 7(b) of the Act. To clarify such position in this final rule, the Agency includes the reference to section 7(b) as well as section 7(a).

One of the commenters suggested that SBA should not provide 7(a) assistance if the earlier Agency loss was attributable to unreimbursed advance payments made by SBA in the 8(a) program. The Agency considers this comment to have merit since a loss is being carried on the Agency's books so long as the advance payments remain unreimbursed. Consequently, the final rule incorporates the suggestion. Under § 124.401 of SBA regulations (13 CFR 124.401), SBA may make cash disbursements to an 8(a) concern prior to the completion of performance of a specific 8(a) subcontract. Such advance payments are made to the 8(a) concern to meet financial requirements pertinent to the performance of the 8(a) contract. The SBA advance payments are reimbursable from the payments by the subcontractor to the 8(a) concern. If such advance payments are not repaid SBA reflects a loss on its books. So long as such loss remains outstanding, the 8(a) contractor to whom the advance payments were made is not eligible for 7(a) financing under this final rule. The Agency position is that an entity which caused the Agency to incur a loss in one of its program is not entitled to additional financial assistance from SBA under the 7(a) program.

Under this final rule, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a small business concern, whether through the ownership of voting shares, by contract, position, or otherwise. Control may be affirmative or



negative and it is immaterial whether it was exercised so long as the power to control existed. In addition to stock ownership, control could arise through the occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. Such determinations shall be made in accordance with part 121 of SBA regulations (13 CFR 121.401).

Under this final rule, a "loss" means the discrepancy between an amount owed and the amount collected for which SBA has not been fully reimbursed (1) from the sale or other disposition of collateral after a debtor's default on a direct SBA loan or after SBA has honored its guaranty with respect to a guaranteed 7(a) loan, (2) as a result of the execution of a compromise agreement, (3) as a result of the bankruptcy of the debtor, or (4) for SBA advance payments under the 8(a) program.

When SBA makes payment under its guaranty with respect to a guaranteed 7(a) loan because of the debtor's default, it reflects such payment on its records and it then seeks to be reimbursed from the sale or other disposition of the underlying collateral. Similarly, when SBA makes a direct business or disaster loan to a concern and the debtor defaults on the loan SBA forecloses on the collateral and attempts to be reimbursed for its loss by the sale or other disposition of the property. To the extent that the proceeds from such sale or disposition do not reimburse the Agency in full for the direct loan or for the funds paid to honor its guaranty, it has incurred a loss. If SBA has entered into a compromise with a borrower, the Agency has agreed to accept an amount from the borrower less than that which would have fully reimbursed the Agency. (A compromise may excuse the business concern from making full payment on its existent financial obligation, but the Agency loss remains outstanding on its books). That the loss in such a situation has been the result of a contract makes it no less a loss which SBA must recognize. Similarly, in the case of a bankruptcy, the Agency may be compelled by law to accept less recompense than owed when the debts of the business are being discharged in bankruptcy, but the loss to the Agency is still considered to exist on its books under this final rule. Similarly, as noted above, SBA carries a loss on its books when it is not reimbursed for advance payments made under the 8(a) program.

A commenter stated that the so-called "fresh start" provision in the Bankruptcy Code (11 U.S.C. 525) might preclude SBA from denying 7(a)

financial assistance to a business which has filed under the Bankruptcy Code and which has been discharged from bankruptcy. Section 525 states that a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to a business which has taken advantage of the Bankruptcy Code. SBA has considered the effect of 11 U.S.C. 525, and is satisfied that such law does not prevent it from refusing 7(a) assistance to such a business, under *Goldrich v. New York Higher Education Services Corporation*, 771 F.2d 28, 30 (2d Cir. 1985) and *Watts v. Pennsylvania Housing Finance Co.*, 876 F.2d 1090, 1093 (3rd Cir. 1989). Both courts held that section 525 does not promise protection against consideration of the prior bankruptcy in post-discharge credit arrangements. As noted by the court in *Watts, supra*, " \* \* \* if a credit guarantee is not a 'similar grant', neither is a loan." 876 F.2d 1090 at 1093.

A commenter suggested that SBA promulgate a rule which would implement 28 U.S.C. 3201(e) which provides that a debtor who has an unsatisfied judgment lien against its property held by the federal government shall be ineligible to receive any additional grants, loans or funds from the government until the judgment is paid in full or otherwise satisfied. SBA will address this issue separately.

As a housekeeping function, by this rulemaking SBA is eliminating the asterisk at the end of § 120.102, together with the editorial note to which it refers, since SBA plans no correction document as mentioned in the note.

**Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35**

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., SBA certifies that this final rule does not have a significant impact on a substantial number of small entities.

SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this rule on the national economy will not attain \$100 million or more.

The final rule does not impose new reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federalism Assessment

in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

**List of Subjects in 13 CFR Part 120**

Loan programs—business, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA is amending part 120, chapter I, title 13, Code of Federal Regulations, as follows:

**PART 120—BUSINESS LOAN POLICY**

1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.102 is revised and § 120.102-12 is added to read as follows:

**§ 120.102 Limitations on loan purposes.**

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, to refinance outstanding notes payable. For additional special rules applicable to refinancing loans, see § 122.7-3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

\* \* \* \* \*

**§ 120.102-12 Loss previously incurred by SBA.**

(a) *Loss on prior loan or guaranty or on 8(a) advance payments.* Assist an applicant when SBA has incurred a loss on unreimbursed advance payments under the 8(a) program or a prior section 7(a) or section 7(b) direct or guaranteed loan (and that loss remains outstanding) to (1) the same applicant (whether a proprietorship, partnership or corporation) or its predecessor; (2) any business entity in which a principal was a principal in an entity on which a previous loss was incurred; or (3) any business entity controlled by the same person(s) who controlled a borrower on which SBA sustained a previous loss. This section is applicable regardless of whether the loss incurred by SBA was attributable to a compromise agreement with SBA or to a voluntary or involuntary bankruptcy. The SBA Assistant Administrator for Financial



Assistance or his/her designee shall have the authority to waive any part of the application of this section for good cause shown.

(b)(1) *Control*. For the purposes of this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a small business concern, whether through the ownership of voting shares, by contract, position, or otherwise. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists. Control can also arise through the occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. Determinations of control shall be made in accordance with 13 CFR 121.401.

(2) *Principal*. For purposes of this section, "principal" means any person who has at least a 20% ownership interest, whether direct or indirect, in a business concern.

(c) *Loss*. For the purposes of this section, "loss" means the discrepancy between an amount owed and the amount collected for which SBA has not been fully reimbursed (1) from the sale or other disposition of collateral which it has acquired after the debtor's default on a direct loan or after SBA has honored its guaranty with respect to a 7(a) loan, (2) from the execution of a compromise agreement, (3) from the bankruptcy of the business, or (4) for SBA advance payments under the 8(a) program.

(d) *Predecessor*. For the purposes of this section, "predecessor" means a business entity controlled by the same person(s) who controls the applicant.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: June 5, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93-20839 Filed 8-26-93; 8:45 am]

BILLING CODE 8025-01-M

## RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 211 and 345

RIN 3220-AA87

Railroad Employers' Reports and Responsibilities; Creditable Railroad Compensation; Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) amends its regulations to modify the method of reporting compensation under the Railroad Retirement Act (RRA) in order to conform such reporting to the reporting required for employment tax treatment of such compensation. These amendments are intended to ease the reporting requirements for employers covered under the RRA.

**EFFECTIVE DATE:** August 27, 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:** Section 209.6 of the Board's regulations (20 CFR 209.6) requires employers to file annual reports of compensation paid to their employees. In preparing these reports the Board has required employers to report required compensation with respect to the year in which it was earned even though paid in a later year, the so-called "earned basis." Thus, for example, compensation attributable to services performed in December but paid in the following January is required to be reported for the calendar year in which the services were performed, not the year in which the compensation was paid. The only exception made to this rule is found at 20 CFR 211.11 which permits retroactive wage increases to be reported in the year paid subject to an election by the employee to have them reported, by way of an adjustment, in the year in which they were earned.

Prior to 1985 this earned basis of reporting was in accord with the employment tax treatment of compensation. Thus, for purposes of the Railroad Retirement Tax Act (RRTA), compensation earned in December but paid in January was deemed paid in December. 26 CFR 31.3231(e)-1(d)(3). However, for calendar years after 1984 the RRTA requires that compensation be reported on the return covering the year in which it was paid, regardless of when it was earned, the so-called "paid basis." See generally §§ 221, 222, 223, 225 and 227 of Public Law 98-76 (97 Stat. 411 (1983)).

This difference in reporting requirements between the RRA and RRTA has caused considerable confusion among employers and employees covered under those statutes. Furthermore, over an employee's career whether compensation is credited on an earned or paid basis has virtually no effect on the amount of an annuity

which may become payable under the RRA.

Consequently, the Board adds a new § 209.15 to its regulations which would permit employers to file their reports required under § 209.6 to reflect compensation on a paid basis, subject to the proviso that an employee, within 4 years after the report, may elect to have the compensation reported by way of adjustment under § 209.7 in the year in which it was earned. Thus, the Board is extending the treatment accorded retroactive wage increases to all payments of compensation except pay for time lost, which is accorded special treatment as set forth in § 209.7(c) of the Board's regulations. In this regard it should be noted that reporting on a paid basis is not mandatory. Thus, where an employer files a report on an earned basis, an employee may not require that employer to make an adjustment to a paid basis. In addition, it should be noted that § 209.15 does not change the definition of a reportable month of service as defined in § 210.3 of title 20. (Section 209.15 also contains cross references to sections dealing with separation payments, vacation and miscellaneous pay, which contain special reporting requirements relating to these types of payments.)

In addition, the Board amends part 211 of its regulations to conform to the change in reporting in § 209.15. For example, § 211.4 (vacation pay) is revised since vacation pay will be reported in accordance with § 209.15. Similar revisions are made to § 211.8 (displacement allowance), § 211.9 (dismissal allowance), and § 211.10 (separation allowance).

Section 211.11 (retroactive wage increase) is removed since it will no longer be necessary when § 209.15 becomes effective. This section is replaced by a new section which explains the operation of section 1(h)(8) of the RRA (45 U.S.C. 231(h)(8)). This section provides that any payment made to an employee by an employer which is subject to railroad retirement taxes shall be considered compensation for purposes of the tier I component of the RRA annuity (the component based on the Social Security Act benefit formula), notwithstanding the fact that such payment may be excluded from compensation by another provision of the RRA. This section is important particularly with respect to sick pay, which is excluded from compensation by section 1(h)(6)(v) of the RRA, but is subject to employment taxes under the Railroad Retirement Tax Act (RRTA), and to certain post-employment payments, such as severance pay. Because such payments are subject to



employment taxes, section 1(h)(8) requires their inclusion in the definition of compensation for purposes of the computation of the tier I component. Such payments will be reported in accordance with revised § 209.13.

Sections 211.13 and 211.14 are redesignated as §§ 211.14 and 211.15 and a new § 211.13 is added which provides that payments made in the year after an employee's death to the employee's survivors or estate are not compensation. These payments have not been subject to employment taxes and therefore should not be considered compensation.

Conforming amendments have been made for § 211.2 (Definition of compensation). Redesignated § 211.14 (Maximum creditable compensation) is amended to provide for the annual publication of the maximum creditable compensation under the RRA. Finally, § 345.4 is amended to make it clear that the reporting requirements under the RRA are also applicable to the Railroad Unemployment Insurance Act (RUIA).

On March 1, 1993, the Board published these regulations as a proposed rule seeking comments by March 31, 1993 (58 FR 11811). A number of comments were received.

One commenter suggested that an employee should not be able to request an employer, who has previously reported his compensation on a paid basis, to adjust the compensation to an earned basis. Adoption of this suggestion, would be inconsistent with the Board's longstanding interpretation of section 1(h)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(h)(1)) and its predecessor section in the Railroad Retirement Act of 1937. This section provides, in part, that "[a] payment made \* \* \* to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation \* \* \* in the period with respect to which the payment is made." For over 40 years the Board has interpreted this language as allowing an employee to have his or her compensation credited in the period it was earned where it was his advantage to do so. The Board sees no compelling reason to change this interpretation. For the vast majority of employees, whether compensation is credited on an earned or paid basis makes little difference in the amount of their retirement benefits. Consequently, the Board does not anticipate many requests to change compensation reported on a paid basis to an earned basis.

One commenter opposed § 211.14, Maximum creditable compensation, on the basis that it would allow the Board to increase the maximum annual taxable

wage base by regulation. Section 211.14 would not authorize the Board to increase the taxable wage base by regulation. This section merely provides for the publication of this base. The actual wage base is set by section 3231(e)(2)(B) of the Internal Revenue Code.

One commenter suggested that all separation allowance and severance payments, up to the annual maximum taxable wage base, be credited toward benefits. Sections 3(i) and 3(j) of the Railroad Retirement Act (45 U.S.C. 231 (i) and (j)) provide that for purposes of the tier II computation, no compensation may be credited and no months of service can accrue for any month after termination of the employment relationship. Thus, such a regulation would not be consistent with the RRA. However, separation payments which may not be credited under section 3(i), but are subject to taxation under the Railroad Retirement Tax Act, are credited for tier I purposes under section 1(h)(8). See § 211.11.

Finally, one commenter questioned the purpose of § 211.13, which provides that payments made by an employer with respect to a deceased employee to the survivors or estate of that employee after the calendar year of his or her death are not compensation. This regulation parallels a regulation under the Social Security Act (20 CFR 404.1058(f)). Such payments are generally not subject to employment taxes and by eliminating such payments from the definition of compensation, both employers and the Board are relieved of making adjustments to an employee's compensation record long after his or her death. The Board believes that this provision will clarify the treatment of payments after death and ease the administrative burden on both employers and the Board.

The Board has determined that this is not a major rule under Executive order 12291. Therefore, no regulatory analysis is required. There are no new information collections imposed by these amendments.

For the reasons set out in the preamble, 20 CFR parts 209, 211 and 345 of the Board's regulations are amended as follows:

#### List of Subject in Parts 209, 211 and 345

Railroad employees, Railroad retirement, Railroad Unemployment Insurance, Railroads.

#### PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

1. The authority citation for part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 209.13 is revised to read as follows:

#### § 209.13 Miscellaneous pay reports.

(a) Employers, insurance carriers or other parties paying miscellaneous pay, as defined in § 211.11 of this chapter, shall furnish the Board an annual report of such pay before the last day of February of the calendar year following the year in which the payment was made.

(b) Miscellaneous pay reports are to be filed in accordance with instructions issued by the Director of Research and Employment Accounts and are to be mailed directly to the Director. The reports may be made on magnetic tape or the form described in § 200.2 of this chapter.

3. Section 209.15 is added to read as follows:

#### § 209.15 Compensation reportable when paid.

(a) *General.* In preparing a report required under this part, an employer may report compensation in the report required for the year in which the compensation was paid even though such compensation was earned by the employee in a previous year. If compensation is reported with respect to the year in which it was paid, it shall be credited by the Board to the employee in such year unless within the four year period provided in § 211.15 of this chapter the employee requests that such compensation be credited to the year in which it was earned. If the employee makes such a request, and the Director of Research and Employment Accounts determines that the compensation should be credited to the year in which it was earned, the reporting employer must file an adjustment report as required by § 209.7 of this part which reports such compensation in the year in which it was earned. The employee may revoke his or her request anytime prior to the filing of the adjustment report. Upon the Board's receipt of the adjustment report, the request becomes irrevocable.

(b) *Pay for time lost.* Compensation which is pay for time lost, as provided in § 211.3 of this chapter, shall be reported with respect to the period in which the time and compensation were lost. For example, if an employee is off work because of an on-the-job injury for a period of months in a given year and in a later year receives a payment from his or her employer to compensate for wages lost during the period of absence, the employer must, by way of adjustment provided for in § 209.7 of this part, report the compensation with



respect to the year in which the time and compensation were lost.

(c) *Separation allowance or severance pay.* A separation allowance or severance payment shall be reported in accordance with § 209.14 of this part.

(d) *Miscellaneous pay.* Miscellaneous pay shall be reported in the year in which it was paid in accordance with instructions provided for in § 209.13 of this part.

(e) *Vacation pay.* Vacation pay may be reported in accordance with this section except that any payments made in the year following the year in which the employee resigns or is discharged shall be reported by way of adjustment under § 209.7 of this part as paid in the year of resignation or discharge.

#### PART 211—CREDITABLE RAILROAD COMPENSATION

4. The authority for part 211 continues to read as follows:

Authority: 45 U.S.C. 231f.

5. Section 211.2 is amended by revising paragraph (b)(9) and adding (b)(13) to read as follows:

##### § 211.2 Definition of compensation.

\* \* \* \* \*

(b) \* \* \*

(9) Miscellaneous pay as provided for in § 211.11 of this part;

\* \* \* \* \*

(13) Payments made by an employer with respect to a deceased employee except as provided for in § 211.13 of this part.

\* \* \* \* \*

6. Section 211.4 is revised to read as follows:

##### § 211.4 Vacation pay.

Payments made to an employee with respect to vacation or holidays shall be considered creditable compensation whether or not the employee takes the vacation or holiday.

7. Section 211.8 is revised to read as follows:

##### § 211.8 Displacement allowance.

An allowance paid to an employee because he has been displaced to a lower paying position is creditable compensation.

##### § 211.9 [Amended]

8. Section 211.9 is amended by removing the last sentence.

9. Section 211.10 is revised to read as follows:

##### § 211.10 Separation allowance or severance pay.

Separation or severance payments are creditable compensation except that no

part of such payment shall be considered creditable compensation to any period after the employee has severed his or her employer-employee relationship except as provided for in § 211.11 of this part.

10. Section 211.11 is revised to read as follows:

##### § 211.11 Miscellaneous pay.

Any payment made to an employee by an employer which is excluded from compensation under the Railroad Retirement Act, but which is subject to taxes under the Railroad Retirement Tax Act, shall be considered compensation for purposes of this part but only for the limited purpose of computing the portion of the annuity computed under sections 3(a), 4(a), or 4(f) of the Railroad Retirement Act (commonly called the tier I component).

11. Sections 211.13 and 211.14 are redesignated §§ 211.14 and 211.15 and a new § 211.13 is added as follows:

##### § 211.13 Payments made after death.

Payments made by an employer with respect to a deceased employee but paid after the calendar year of the employee's death to the employee's survivors or estate are not creditable compensation.

12. Newly redesignated § 211.14, is revised to read as follows:

##### § 211.14 Maximum creditable compensation.

Maximum creditable compensation for calendar years after 1984 is the maximum annual taxable wage base defined in section 3231(e)(2)(B) of the Internal Revenue Code of 1986. In November of each calendar year the Director of Research and Employment Accounts shall notify each employer of the amount of maximum creditable compensation applicable to the following calendar year.

#### PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

13. The authority citation for part 345 is revised to read as follows:

Authority: 45 U.S.C. 362(1).

14. Section 345.4 is revised to read as follows:

##### § 345.4 Employers' reports of compensation of employees.

The provisions of part 209 of this chapter shall be applicable to the reporting of compensation under the Railroad Unemployment Insurance Act to the same extent and in the same manner as they are applicable to the reporting of compensation under the Railroad Retirement Act.

Dated: August 20, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93-20793 Filed 8-26-93; 8:45 am]

BILLING CODE 7905-01-P

#### DEPARTMENT OF THE TREASURY

##### Bureau of Alcohol, Tobacco, and Firearms

##### 27 CFR Part 5

[T.D. ATF-348; Re: T.D. ATF-333, T.D. ATF-317, T.D. ATF-311, T.D. ATF-306, Notice Nos. 716, 403, 410, 583; 91F009P]

RIN 1512-AA10

##### Vodka; Deferral of Compliance Date

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

**SUMMARY:** This final rule defers the compliance date with respect to the citric acid limitation established in an earlier regulation concerning vodka. The deferral of the compliance date is necessary in order to allow time to publish a notice in the *Federal Register* announcing the results of independent lab tests on sensory threshold levels for citric acid addition to vodka and to make the material available for public comment.

**DATES:** This document is effective on August 27, 1993. The compliance date for 27 CFR 5.23(a)(3)(ii) with respect to the citric acid limitation is August 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** David W. Brokaw, Wine and Beer Branch, (202) 927-8230.

##### SUPPLEMENTARY INFORMATION:

##### Background

T.D. ATF-306 (55 FR 49994 (December 4, 1990)), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million) of sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka. T.D. ATF-306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products may made within the limitations of the Treasury decision. The compliance date was deferred by T.D. ATF-333, 57 FR 40323 (September 3, 1992).

##### Petition

On March 4, 1991, ATF issued T.D. ATF-311, 56 FR 8922, deferring the compliance date with respect to the



citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF-306. T.D. ATF-311 was issued in response to a petition from Heublein, Inc., for the reconsideration of T.D. ATF-306. Heublein's petition was based on a representation that new scientific information and data not previously available had come to their attention concerning maximum levels for the use of citric acid in vodka.

#### Notice No. 716

On April 29, 1991, ATF issued Notice No. 716, 56 FR 19623, to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF-306 should be retained or revised. During the comment period, ATF secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka. In response to Notice No. 716, ATF received ten comments. All of the comments were opposed to setting a maximum limitation as low as 150 ppm for the addition of citric acid to vodka. The only commenter submitting sensory test data from independent contractors was Heublein, Inc. An evaluation of the test data by ATF revealed a disparity between the Heublein independent contractors' test results and the sensory test results from the outside firm secured by ATF. Therefore, the compliance date of December 4, 1991, set forth in T.D. ATF-311, was deferred until September 3, 1992, by T.D. ATF-317 in order to allow time to resolve the disparity in test results.

On January 28, 1992, the President asked U.S. government agencies to set aside a 90-day period to evaluate existing regulations and programs and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burden or otherwise promote economic growth. Subsequently, the president's 90-day moratorium on new regulations was extended until August 28, 1992.

During that time, ATF reexamined its system of regulatory controls over the labeling of distilled spirits to ensure that existing regulations do not impose any unnecessary regulatory burdens. At the same time, ATF published T.D. ATF-333 deferring the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) until September 3, 1993.

Currently, a notice of proposed rulemaking (NPRM) is being prepared announcing the results of the independent tests conducted by the outside testing firm discussed in Notice No. 716. Therefore, ATF is deferring the

compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) in order to allow time to publish a notice in the *Federal Register* announcing the results of the independent lab tests on sensory threshold levels for citric acid addition to vodka and to make the material available for public comment.

#### Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF-306, in order to give public notice concerning the independent lab results, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF-306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

#### Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

- An annual effect on the economy of \$100 million or more;
- Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

#### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

#### Disclosure

Copies of Heublein's petition, the notices, the Treasury decisions, and all comments are available for public inspection during normal business

hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

#### Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is further postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF-306. The compliance date is August 28, 1995.

Signed: July 8, 1993.

Stephen E. Higgins,  
Director.

Approved: August 19, 1993.

Ronald K. Noble,  
Assistant Secretary (Enforcement).  
[FR Doc. 93-20836 Filed 8-26-93; 8:45 am]  
BILLING CODE 4810-31-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 216

RIN 1010-AB84

#### Amendment of Production Accounting Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Minerals Management Service (MMS) is amending its Royalty Management Program regulations at 30 CFR part 216 to reflect administrative changes due to the transfer of responsibility for production accounting related to onshore Federal and Indian oil and gas leases from the Bureau of Land Management (BLM) to MMS. The amendments clarify operator responsibilities for reporting information to MMS.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, Mail Stop 3901, P.O. Box 25165, Denver, Colorado 80225-0165, telephone (303) 231-3432.

**SUPPLEMENTARY INFORMATION:** The principal author of this final rulemaking is Marvin D. Shaver of the Rules and Procedures Staff, MMS, Royalty Management Program.



## I. Background

The MMS maintains a computerized Production Accounting and Auditing System (PAAS) which is an integrated system of manual and automated processes for minerals production reporting, accounting, and auditing. Based upon production reports submitted by reporters, the PAAS will track oil, gas, and solid minerals produced from or allocated to Federal and Indian leases, including the OCS, from the source of production to the point of disposition with emphasis on the point of royalty determination, or point of sale, whichever is applicable. Initially, only production information on offshore leases and certain onshore leases was submitted to PAAS.

At the Secretary of the Interior's request, a study was performed within the Department of the Interior (DOI) to determine the feasibility of extending the reporting requirements of the PAAS to all onshore oil and gas leases. The Secretary also directed that the Royalty Management Advisory Committee (RMAC) propose recommendations on the issue. The DOI study, called the "Mineral Lease Information Study" (MLIS), concluded in a September 1986 report that onshore implementation of PAAS would be fiscally attractive to the Government and would offer several advantages to lease and royalty management programs. However, there would be a substantial increase in industry's costs of reporting. The RMAC panel recommended that DOI computerize the existing production report (Form BLM 3160-6) submitted to the BLM and use data from this form to effect systematic production/sales comparisons.

Because of the RMAC panel's recommendations, the Secretary directed, in March 1987, that an addendum to the MLIS report be completed to analyze various options of implementing the panel's recommendations. This addendum concluded that automation of a slightly modified version of the existing form should occur and that MMS should become responsible for the receipt, edit/error correction, and distribution of the data to BLM, the Bureau of Indian Affairs, States, and Indian Tribes. Based on these studies, the Secretary decided in June 1987 that:

- Responsibility for receipt and processing of production data should be transferred from BLM to MMS.
- Operators of the Federal and Indian onshore oil and gas leases should continue to report production data on the existing production report which

will be slightly modified and automated, and

- the MMS should distribute production data to all users.

On May 9, 1988, MMS published a Notice of Final Rulemaking in the *Federal Register* (53 FR 16408) to amend its regulations at 30 CFR part 216 to provide instructions to lease operators during the transfer of accounting responsibility from BLM. A phased conversion schedule was followed to accomplish the transfer of production reporting from BLM to MMS. The transfer (conversion) of responsibility from BLM to the MMS automated system has been completed. Therefore, MMS is amending its regulations to remove the instructions applicable during the conversion period. We are also amending our regulations to clarify operator responsibilities for reporting operations information to MMS.

## II. Summary of Final Rule

The amendments included in this rulemaking are discussed below by section. Many sections in part 216 are not being amended by this rulemaking.

### Section 216.2 Scope

This section is amended to remove instructions to reporters for submitting production reports during the conversion period.

### Section 216.6 Definitions

This section is amended to remove the definition of "Conversion period" at paragraph (e). We are also amending this section to remove the alphabetical designation (i.e., (a), (b), (c), etc.) assigned to each definition for organizational consistency with other MMS regulations.

### Section 216.20 Applicability

This section is amended to remove the applicability of 30 CFR part 216 to operators during the conversion period.

### Section 216.50 Monthly Report of Operations

This section is amended to remove paragraph (a) which made the reporting requirements of § 216.50 applicable to operators during the conversion period. Paragraphs (b) through (e) are redesignated as paragraphs (a) through (d), respectively. We are also amending the new paragraph (a), formerly paragraph (b), to clarify operator responsibilities for reporting operations information on this report (Form MMS-3160). The cross reference in the new paragraph (d)(3), formerly paragraph (e)(3), is changed from (e)(2) to (d)(2).

### Section 216.51 Facility and Measurement Information Form and Supplement

This section is amended to remove language relating to the conversion period. This section is also amended to remove the reporting requirements relative to the "supplement form" (Form MMS-4051 Supplement), which is no longer required. The title of § 216.51 is also amended to remove reference to the supplement.

### Section 216.54 Oil and Gas Operations Report

This section is amended to clarify the responsibilities of operators who elect to report production on the Oil and Gas Operation Report (Form MMS-4054) instead of the Monthly Report of Operations (Form MMS-3160).

### Section 216.55 Gas Analysis Report

Under the existing regulations, this report (Form MMS-4055) is required to be submitted by onshore and offshore operators by the 15th day of the second month following the production month. Because MMS no longer requires the information from onshore operators on a monthly basis, we are amending § 216.55. The amended § 216.55 requires that Form MMS-4055 be submitted by offshore operators on a semi-annual basis and by onshore operators upon request.

### Section 216.56 Gas Plant Operations Report

Under the existing regulations, this report (Form MMS-4056) is required to be submitted by onshore and offshore operators by the 15th day of the second month following the production month. Because MMS no longer requires the information from onshore operators on a monthly basis, we are amending § 216.56. The amended § 216.56 requires that Form MMS-4056 be submitted by the 15th day of the second month following the production month by offshore operators unless the plant no longer processes gas and has not processed said gas for 6 months or more. The amended section requires onshore operators to submit Form MMS-4056 only upon request by MMS in order to verify the composition of a gas stream which is transferred to a gas plant.

### Section 216.58 Production Allocation Schedule Report

Under the existing regulations, this report (Form MMS-4058) is required to be submitted by onshore and off-shore operators of any facility or measurement device. Because MMS no longer requires the information from onshore operators, we are amending § 216.58. The



amended § 216.58 requires that Form MMS-4058 be submitted only by offshore operators by the 15th day of the second month following the production month.

#### Procedural Matters

##### *Administrative Procedure Act*

The changes included in this rulemaking are administrative only and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon the date of publication in the **Federal Register**.

##### *Executive Order 12291 and the Regulatory Flexibility Act*

Because the changes are administrative only with no additional requirements or burden placed on small business entities, the Department of the Interior (Department) has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### *Executive Order 12778*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

##### *Paperwork Reduction Act of 1980*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned Clearance Number 1010-0040.

##### *National Environmental Policy Act of 1969*

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

#### List of Subjects in 30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas,

Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: July 23, 1993.

**Bob Armstrong,**

*Assistant Secretary—Land and Minerals Management.*

For the reasons set out in the preamble, 30 CFR part 216 is amended as follows:

#### **PART 216—PRODUCTION ACCOUNTING**

1. The authority citation for part 216 is revised to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 216.2 under Subpart A—General Provisions, is revised to read as follows:

##### **§ 216.2 Scope.**

This part governs the reporting of oil, gas, and solid minerals operations information on Federal and Indian leases or federally-approved agreements including leases or agreements on the OCS. This part also governs the reporting of other operational information associated with production from Federal and Indian leases or federally-approved agreements when such operations occur prior to the point of sale or royalty determination, whichever is applicable. Reporters are required to submit certain production reports to MMS as set forth in this part.

##### **§ 216.6 [Amended]**

3. Section 216.6, "Definitions" under Subpart A—General Provisions is amended to remove the alphabetic paragraph designation of each definition and to remove the definition of "Conversion period".

4. Section 216.20 under Subpart A—General Provisions, is revised to read as follows:

##### **§ 216.20 Applicability.**

The requirements of this part shall apply to all oil, gas, and solid mineral operators reporting information on Federal and Indian leases or federally-approved agreements, including leases or agreements on the OCS.

5. Section 216.50, under Subpart B—Oil and Gas, General, is amended by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as new paragraphs (a) through (d), respectively. The new paragraph (a)

(formerly paragraph (b)) is revised to read as follows:

##### **§ 216.50 Monthly report of operations.**

(a) Each operator of each onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned shall file a Monthly Report of Operations (Form MMS-3160) unless production data is authorized to be reported on Form MMS-4054. This requirement does not apply to reporting of operations of gas storage agreements, which must continue to be reported to the appropriate BLM office. A completed Form MMS-3160 shall be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated, or the last well is approved as permanently plugged or abandoned by BLM and all inventory is disposed of, or until monthly omission of the report is authorized by MMS. The MMS may grant time extensions for filing Form MMS-3160 on a case-by-case basis upon written request to MMS.

6. The new paragraph (d)(3) of § 216.50 (formerly paragraph (e)(3)) is amended to change the cross reference in that paragraph from "paragraph (e)(2)" to "paragraph (d)(2)".

7. Section 216.51, under Subpart B—Oil and Gas, General, is revised to read as follows:

##### **§ 216.51 Facility and Measurement Information Form.**

A Facility and Measurement Information Form (Form MMS-4051) must be filed for each facility or measurement device which handles production from any Federal or Indian lease, or federally-approved agreement, through the point of first sale or the point of royalty computation, whichever is later. The completed form must be filed by any operator (reporting production on a Form MMS-4054) of an onshore Facility Measurement Point (FMP) that handles production from any Federal or Indian lease or federally-approved agreement prior to, or at the point of royalty determination, or any operator who acquires an onshore FMP that is currently reporting to the PAAS. The report must be filed no later than 30 days after the establishment of a new facility or measurement device, or 30 days after a change is made to an existing facility or measurement device.

8. Section 216.54 under Subpart B—Oil and Gas, General, is revised to read as follows:



**§ 216.54 Oil and Gas Operations Report.**

Every operator of an OCS lease or federally-approved offshore agreement and any operator of an onshore Federal or Indian lease or federally-approved agreement that has elected to report production on an Oil and Gas Operations Report (Form MMS-4054) instead of the Form MMS-3160 (see § 216.50(c)(2)) must file a Form MMS-4054 each month as long as there exists at least one well that is not permanently plugged and abandoned. A completed Form MMS-4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported, until the lease or agreement is terminated, or the last well is permanently plugged or abandoned and all inventory is disposed of, or until omission of the report is authorized by MMS.

9. Section § 216.55, under Subpart B—Oil and Gas, General, is revised to read as follows:

**§ 216.55 Gas Analysis Report.**

Any operator of an OCS lease or federally-approved agreement and, upon request by MMS, any operator of an onshore Federal or Indian lease or federally-approved agreement, from which gas is sold or is transferred for processing prior to the point of royalty computation, must file a Gas Analysis Report (Form MMS-4055) for each sales or transfer meter. The form is due at least twice a year; once in the first 6 months of the calendar year, and once in the last 6 months of the calendar year, but may be submitted monthly, or as specified by the gas sales contract terms, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies. All reports must be submitted by August 15th for any sales/transfers occurring in the first 6 months of the calendar year and February 15th of the following year for any sales/transfers occurring in the second 6 months of the calendar year.

10. Section 216.56, under Subpart B—Oil and Gas, General, is revised to read as follows:

**§ 216.56 Gas Plant Operations Report.**

The operator of each gas plant that processes gas that originates from an OCS lease or federally-approved agreement and, upon request by MMS, the operator of a gas plant that processes gas from an onshore Federal or Indian lease or federally-approved agreement, prior to the point of royalty computation, must file a Gas Plant Operations Report (Form MMS-4056)

for each calendar month, beginning with the month in which processing of gas is initiated, on or before the 15th day of the second month following the month being reported. The report must show 100 percent of the gas. If a plant no longer processes gas that originated from a Federal or Indian lease, or federally-approved agreement, prior to the point of royalty computation and has not processed such gas for 6 months or more, the operator of the gas plant is not required to file a Gas Plant Operations Report until the plant again produces such gas. The operator of the gas plant must notify MMS, in writing, when such gas has not been processed for 6 months or longer.

11. Section 216.58 under Subpart B—Oil and Gas, General, is revised to read as follows:

**§ 216.58 Production Allocation Schedule Report.**

(a) Any operator of an offshore Facility Measurement Point (FMP) handling production from a Federal lease or federally-approved agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination must file a Production Allocation Schedule Report (Form MMS-4058). This report is not required whenever all of the following conditions are met:

- (1) All leases involved are Federal leases;
- (2) All leases have the same fixed royalty rate;
- (3) All leases are operated by the same operator;
- (4) The facility measurement device is operated by the same person as the leases/agreements;
- (5) Production has not been previously measured for royalty determination; and
- (6) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS-4058 is required under this part.

(b) A completed Form MMS-4058 must be filed for each calendar month, beginning with the month in which handling of production covered by this section is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

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BILLING CODE 4310-MR-M

**30 CFR Part 256**

RIN 1010-AB38

**Surety Bond Coverage for Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf (OCS)**

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

**SUMMARY:** This final rule amends the surety bond provisions. Although this final rule applies to all OCS leases, the new levels of required minimum bond coverage are designed primarily to address lease abandonment and cleanup on producing leases in shallow water from 0 to 200 feet. The level of bond coverage required on the remaining leases will be addressed on a case-by-case basis pursuant to § 256.61. Additional bonds. This rule is being promulgated to assure that lessees have the financial capacity to carry out their obligations, e.g., to properly plug and abandon wells, remove platforms, and clear the well or platform site of obstructions.

**EFFECTIVE DATE:** November 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gerald D. Rhodes, telephone (703) 787-1600.

**SUPPLEMENTARY INFORMATION:** This final rule establishes a three-tier approach to bond coverage requirements for OCS oil and gas leases and postlease operations similar to the one proposed in the notice of proposed rulemaking (NPR) that was published on January 24, 1990 (55 FR 2388). This approach provides a transition period for implementation of the new bond requirements by retaining the current level of bond coverage for leases until such time as there is a change in lease activity or ownership. The increased bond coverage will be required when an Exploration Plan (EP) or a significant revision to an approved EP, a Development and Production Plan (DPP) or a significant revision to an approved DPP, a Development Operations Coordination Document (DOCD), or a significant revision to an approved DOCD, or a request for assignment of a lease is submitted to the Minerals Management Service (MMS) for approval. The final rule also allows a lessee or operator to submit a bond in an amount less than the amount prescribed by the rule for individual leases when the authorized officer agrees with the lessee's (operator's) showing that well abandonment, platform removal, and site clearance costs for the lease will be less than the amount of the lease bond coverage



(\$200,000 to \$500,000) specified in this final rule.

The title of part 256 has been changed to Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf to reflect the subject matter contained therein. Part 256 no longer addresses rights-of-way, and the leasing of OCS minerals other than oil, gas, and the sulphur is governed by the provision of 30 CFR part 281. Changes have also been made in the text of the rule, as issued, to clarify the intent of the new rule and to retain certain aspects of the current rule that were omitted from the proposed rule (e.g., the final rule retains the provision that permits a lessee to maintain a \$300,000 areawide bond if it only holds leases that have had no exploration or development and production activity proposed).

#### Provisions of the Final Rule

The objective of this rulemaking is to identify the appropriate level(s) of bond coverage required of OCS lessees. The level of coverage should reflect an appropriate balance between encouraging the maximum economic recovery of natural gas and oil from Federal offshore leases while providing the Federal Government with an adequate level of protection in the event lessees default in their obligations to properly abandon lease wells, remove platforms and other structures, and clear the seafloor around the well and platform site of debris and other obstructions to alternate uses.

The 1985 Marine Board of the National Research Council study entitled "Disposal of Offshore Platforms," estimated the removal costs for structures in 20 feet or less of water (includes some older structures in up to 50 feet of water) to range from \$50,000 to \$400,000 while the costs of removing structures in water depths between 20 feet (in some instances 50 feet) and 100 feet were estimated to range between \$600,000 and \$1.3 million. The removal costs of structures in water depths of 100 to 200 feet were estimated to range between \$1 million and \$2.5 million.

The total costs for platform removal, well abandonment, and site clearance can vary significantly among individual leases because of differences in the number of structures, number and depth of wells, water depth, and other factors. The MMS estimates the average cost for removing all structures and clearing entire lease sites in shallow water (0 to 200 feet) in the Gulf of Mexico (GOM) to be: (0 to 50 feet)—\$3.2 million, (51 to 100 feet)—\$2.6 million, (101 to 200 feet)—\$3.9 million. The MMS estimates the same work in deep water (more than 201 feet) to be (201 to 400 feet)—\$8.8

million, (more than 401 feet)—\$21 to over \$90 million.

The surety bond requirements of this rule balance the Government's need for a greater degree of protection against the costs and disincentives to additional production that higher surety bonds would impose. The requirements do not seek to require surety bond levels that would cover each individual lease's full liabilities in all cases, since it is expected that in many cases the wells and associated structures on a lease would not all stop being economically producible at the same time. Thus, it is expected that the lessee typically will have some funds available to cover part or all of its potential liability. The MMS regulations at 30 CFR part 250, subparts G and I, and other MMS requirements make it clear that lessees are responsible for all removal, plugging and abandonment, and site clearance costs—the level of bond coverage does not provide a ceiling for lessee obligations and responsibilities.

The findings of the National Research Council study combined with more recent lessee provided information concerning actual well-abandonment costs and site cleanup costs provided general guidelines for revising the levels of bond coverage required without causing an unnecessary burden on offshore lessees and operators.

The new, basic surety bond amounts established by this final rule will provide an effective mechanism to give greater assurance of the financial capability of OCS lessees and operators, without hindering the capability of those lessees and operators to undertake OCS exploration and development operations.

Under the approach retained by this final rule, prior to the issuance of a lease, a successful bidder must submit and maintain a \$50,000 surety bond conditioned upon compliance with all the terms and conditions of the lease. The successful bidder is not required to submit an individual \$50,000 surety bond if the bidder already maintains or furnishes an areawide surety bond in any of the amounts specified in the rule (\$300,000, \$1 million, or \$3 million) that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases held by the bidder in the OCS area in which the lease that is to be issued is located.

When a lessee proposes to initiate exploratory activities on a lease, or proposes to assign the record title in a lease that has an approved EP, a surety bond in the amount of \$200,000 must be submitted with the EP unless the authorized officer, for good cause, permits the lessee to submit the

\$200,000 bond after the submission of the EP but prior to the approval of drilling activities under the EP. A lessee need not submit a \$200,000 lease exploration bond with its EP if the lessee already maintains or furnishes a \$500,000 lease development bond or an areawide surety bond in the sum of \$1 million or \$3 million that is conditioned upon compliance with all the terms and conditions of the OCS oil and gas and sulphur leases held by the lessee in the OCS area in which the lease is located.

At the development and production stage, or where a lessee proposes to assign the record title in a developed lease, this final rule requires the submission of a \$500,000 lease bond unless the lessee already maintains or furnishes an areawide bond in the amount of \$3 million that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases in the OCS area in which the lease is located.

As noted in the preamble to the proposed rule and proposed § 250.62, these higher bond amounts are also required when there is an assignment by lessees of record title interests in a lease with an approved EP, DPP, or DOCDC consistent with the requirements of 30 CFR 256.64(c).

This final rule retains the provision under which an operator's bond in an equal amount may be substituted for a lessee's bond. It should be noted that the substitution of an operator's bond for a lessee's bond does not relieve the lessee(s) of the obligation to comply with all the terms and conditions of the lease.

This final rule also retains the provision under which the authorized officer may require additional security in the form of a supplemental bond or bonds or require an increase in the coverage of an existing bond when additional security is deemed necessary (30 CFR 256.61, Additional bonds). Thus, the authorized officer may, on a case-by-case basis, require a lessee to increase its level of bond coverage to the level necessary to ensure present and future compliance with all lease obligations. Section 256.61(d) expands upon current § 256.61 to include examples of factors similar to those currently being examined by authorized officers to help determine the need for additional or supplemental security. Those factors include, but are not limited to, financial ability, record of meeting obligations, and projected financial strength. Inclusion of such examples informs the public of the kinds of considerations that have been and will be evaluated in determining



the need for an increase in the bond coverage required on a lease.

This is not a substantive change from the kinds of factors MMS currently examines.

This rule also requires that bonds be issued by a surety certified by the U.S. Department of the Treasury (U.S. Treasury). U.S. Treasury securities (U.S. Bonds or Notes) may be submitted in lieu of a bond should the lessee or operator so choose. In addition, the rule allows the substitution of alternate forms of financial assurance in lieu of surety bonds if certain criteria are met and the authorized officer approves the substitution. For example, letters of credit might be provided in lieu of the required surety bond if the authorized officer determines that the interests of the Government are sufficiently protected, and the letter of credit is not revocable.

The MMS is not adopting that provision of proposed § 256.62(e) which would have excused an assignee from furnishing bond if the assignor furnished bond and agreed to liability for the assignee's performance, because it is unnecessary. An existing regulation at § 256.64(c) permits an assignor and assignee agreement as joint principals on a bond. Further, current rules at § 256.62(d) provide that assignors remain "liable for all obligations under the lease accruing prior to the approval of the assignment." These obligations, accrued but not yet due for performance, include those of sealing wells, removing platforms, and clearing the ocean of obstructions. These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in subpart G of part 250 are followed. The assignor continues to be jointly liable for the performance of these obligations with respect to wells or structures in existence and not plugged or removed at the time of the assignment.<sup>1</sup>

<sup>1</sup> A letter dated June 6, 1988, to a single producer from the Director of MMS stated that Interior would not proceed against the original lessee-assignor to perform plugging and abandonment, apparently on the erroneous premise that the regulations did not contemplate assignors remaining responsible for any obligations for which the assignee was obligated under 30 CFR 256.62(e). The letter was mistaken in apparently assuming only one party could be liable for any given obligation. The MMS is not alone in holding an assignor jointly liable with an assignee for performing an obligation accruing before the assignment and which continues to be due after the assignment. In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere. See, generally, Clark, Continued Liability of a Seller After a Sale of Producing Properties, 41 Inst. on Oil and Gas L. and Tax'n 5-6 (1990). Similarly, under

Typically an assignment agreement between an assignor and assignee will require the assignee to meet these obligations, and to provide a performance bond or indemnity agreement to protect the assignor from potential liability to the lessor or the regulatory body for their performance. However, as one means of minimizing the assignor's perceived need for demanding bond for the same liability as bonded for MMS, MMS will accept, under § 256.64(c), a joint bond from an assignor and assignee in the amount specified in this rule. The Regional Director may also employ the authority under new § 256.58(g) to accept alternative security instruments, or the implicit authority to phase in the increase in supplemental bond required under new § 256.61(d). This should facilities assignee bonding at a sufficient level to eliminate the assignor's perceived need for a second bond not payable to the United States.

Additional revisions for technical accuracy not affecting the substance of the rule were also made.

#### Comments and Recommendations of Respondents

In order to alert the potentially impacted parties, MMS mailed copies of the Federal Register NPR directly to some 272 lessees and operators who are currently active in the OCS. This final rule incorporates, to the degree practicable, the comments and recommendations received in response to the NPR, while providing a more acceptable level of increased protection for the environment.

A total of 60 timely comments were received. Fifty-three of these were from companies and individuals in the offshore oil and gas industry. Of the 53, 30 were from lessees and operators and 15 from companies and individuals in the oil and gas support services industry. The opposition to the proposed increases in bond coverage expressed in these comments was based upon the view that the United States should accept responsibility for lease abandonment and clearance liabilities resulting from a default by a lessee or operator either directly or through a fund established for that purpose. Federal and State agencies either supported the proposed rule or objected to the proposal on the basis that it did not provide the level of bond coverage necessary to ensure lessee/operator

the Louisiana Mineral Code, an assignee becomes responsible directly to the lessor for the performance of the lease obligations, but the assignor is not relieved of its obligations unless the lessor discharges the assignor expressly and in writing. La. Rev. Stat. 31:128 and 129.

compliance with lease abandonment and cleanup requirements.

Comments from five companies in the insurance and surety business were mixed with one generally supporting the proposed rule, two favoring alternate approaches, and two providing only general comments.

*Comment:* A frequently stated comment was that the proposed \$3 million areawide bond is much greater than the costs of site clearance in shallow water depths and exceeds the costs actually experienced by the smaller companies which do not operate in deeper water. Several respondents suggested that the proposed higher bond requirements apply only to facilities in water depths greater than 300 feet. These respondents supported their argument that the proposed bond coverage was too high by citing the Category I cost estimate of \$400,000 for platform removal presented in the 1985 Marine Board study.

*Response:* The estimated costs of \$400,000 for removing Category I lease structures was for small structures in water depths of less than 20 feet (and some older structures in less than 50 feet of water) and did not include costs associated with well abandonment and seafloor clearance. It should be noted that leases in shallow water support more structures on average than do leases in deeper water.

*Comment:* Many of the respondents opposed the proposed rule on the grounds that the record does not show a significant level of default by OCS lessees.

*Response:* The record shows that defaults by OCS lessees in meeting their well (lease) abandonment and cleanup obligations are a relatively new but growing phenomenon. The development of this new phenomenon has focused attention on the hazards to safety of operations and potential environmental damage faced in this situation. The MMS does not have the appropriation authority required to assume the financial liabilities of even one lessee or operator who defaults on its obligations to abandon lease wells, remove structures and clear the worksite. Thus, MMS would be remiss in its responsibility for protection of the environment and safety of operations in the OCS if it waits the development of a record of a more significant level of defaults by offshore lessees before taking action.

Prior to 1985, the number of platforms being decommissioned was relatively small. In 1989, 100 platforms were removed from the Gulf of Mexico OCS. This is up from the 32 that were removed in 1985. The number of



platforms expected to be removed in 1995 is 148. As these greater numbers of platforms must be abandoned and removed, the potential for damage due to lessees' failure to perform required lease abandonment and clearance operations becomes significantly greater.

In a recent instance, in which a lessee failed to carry out OCS well abandonments or to timely meet requirements for restoring production through OCS well repairs, after numerous demands by MMS, the lease expired. The lessee lacked the financial capability to carry out its lease abandonment responsibilities and other obligations. The wells were subject to numerous liens. The MMS offered the tract for lease, subject to the successful bidder accepting responsibility for eventually plugging and abandoning those wells even if it never used them. The MMS was fortunate to be able to lease the tract subject to these conditions and the outstanding liens. The MMS would not have been so fortunate had the resources of the tract been depleted.

*Comment:* Another reason cited for opposition to the proposed increase in the required level of bond coverage was the view that coverage at the higher amounts would be extremely difficult if not impossible for some to obtain. Many operators reported that they are required to fully collateralize the surety bonds that they obtain. This requirement of bonding companies ties up assets which lessees and operators feel could be better used for their leasehold operations. Some respondents estimate that the cost for the higher areawide bond coverage and its capitalization would be \$150,000 a year or more. Opponents of the higher bonding requirement claimed that the added cost of the higher bond would eliminate many smaller operators who want to participate in oil and gas operations in the OCS.

*Response:* Entities that engage in offshore activities (i.e., activities in the OCS) must have access to high levels of technical and financial resources in order to properly and safely conduct offshore activities. In general, such entities are not considered to be small. The MMS recognizes that the increased levels of bond coverage represent higher costs for OCS lessees and operators. It does not necessarily follow that competent smaller operators or producers will be eliminated from conducting operations in the OCS or that competition will be affected. The MMS is aware of a number of smaller operators who are providing much higher levels of surety protection to the

current lessees of OCS leases which they (the smaller operators) hope to obtain through farm-in or other means. It should be noted that the regulations require only one bond for each lease. Where there are two or more lessees, only one needs to maintain the bond for that lease in as much as each lessee is responsible for the full performance of lease obligations. Lessees may continue to hold leasehold interests in OCS leases covered by bonds provided by other lessees without providing bond coverage. (It should be noted that the current level of bond coverage is provided by 25 percent of the owners of lease and pipeline right-of-way interests.) However, when operators become sole lessees, they must provide an appropriate level of bond coverage prior to the approval of the lease assignment.

*Comment:* A number of commenters claimed that the proposed rule would eliminate many small operators from the OCS and reduce competition.

*Response:* As noted in the preceding response, MMS does not believe that this rule will adversely affect a substantial number of small entities. Safe conduct of activities, such as exploration in the OCS and the development and production of OCS oil and gas properties, requires access to high levels of experience together with high levels of technical and financial resources. The inherent costs and nature of these activities, rather than any discretionary rulemaking action on the part of MMS, establish effective barriers to the participation of substantial numbers of small entities in OCS activities.

*Comment:* One commenter recommended a "phase-in" of the proposed increased bonding requirements rather than a single compliance date in order to allow operators, who currently have bonds, to continue operations without having to increase their bond coverage until a new activity is commenced. The "phase-in" approach will allow sureties to underwrite the additional bonds over a period of time rather than be faced with a mass effort just before a prescribed date for all lessees to bring their bond coverage into compliance with the increased levels. Another commenter recommended that MMS include a specific provision for review and adjustment of the bond coverage for existing offshore leases and structures. That commenter felt that current lessees should be required to post supplemental bonds or increase their coverage to the level mandated under the new regulations, when finalized.

*Response:* The MMS recognizes the need to "phase-in" the increase in bonding requirements contained in this final rule and, therefore, is not requiring additional bonds from all lessees simultaneously but is requiring additional security in most cases only at such times as new MMS approvals are needed. A separate rulemaking is being initiated which would establish a deadline for the posting of supplemental bonds for leases which have experienced exploration or development and production activities under EP's, DOCD's, or DPP's approved prior to the effective date of this rule. These leases, of course, remain subject to the supplemental bonding rule at 30 CFR 256.61.

#### Alternate Approaches

One alternate approach suggested to MMS by an insurance/bonding consultant includes an arrangement under which the lease bond would be collateralized by payments from leasehold production into an escrow account (trust fund) established by lessees with a financial institution serving as trustee. Initially, the necessary surety bond coverage would be provided by the financial institution. As payments are made into a trust fund (e.g., quarterly payments derived from "overrides" on production), the trust fund would replace collateralization for the bond. Once the amount deposited in the trust fund reaches the level of the required bond coverage, the parties in interest could retire the bond and deposit a U.S. Treasury security purchased with the proceeds from the escrow account with MMS, or the parties could continue to maintain the surety bond on a fully collateralized basis.

In two recent bankruptcies, MMS has agreed to accept the establishment of abandonment accounts or trust funds with significant initial deposits to be followed by payments at a specified rate from future production, assured by the grant of an overriding royalty or the pledge or mortgage of proved producing reserves. The use of trust funds is cited here only as an example of the kinds of innovative arrangements that have been developed between offshore lease assignors and assignees. The final rule permits lessees to create a wide variety of new arrangements and mechanisms for compliance with the new minimum bonding requirements, as long as the requirements of new § 256.58 (f) or (g) are met.

The January 1990 NPR described two alternative approaches for ensuring adequate levels in the safety of OCS operations and the protection of the



environment from lessee defaults in obligations for well abandonment, platform removal, site clearance, or other lessee requirements. The NPR asked for comments on these alternative approaches as well as suggestions and comments on any other approaches which respondents wished to submit for consideration as alternatives to the current bonding requirements and MMS proposed changes.

Respondents suggested a variety of alternate approaches. We have evaluated these proposals in terms of the degree to which each meets the objectives to:

- (1) Assure lessees' financial capacity to perform lease obligations;
- (2) Protect the environment from threat of harm which might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations on a lease;
- (3) Achieve a reasonable degree of protection at a minimum increase in costs to lessees and operators; and
- (4) Select a method of attaining these goals which impacts equitably on all parties who would be affected.

The following alternative approaches have been considered:

**Variable bonds**—This approach was one of the alternatives put forward by MMS in the NPR. Specifically, comments were requested on the concept of a level of bond coverage that would increase as a percent of the total investment in exploration or development and production structures on the lease.

Several variations of this concept were supported by 17 respondents. Specific suggestions were:

- (1) To set the level of bond coverage on the basis of water depth (greater or less than 300 feet);
- (2) To establish the level of bond coverage on a case-by-case basis according to the site;
- (3) To establish sliding scale levels of bond coverage for operators based on their activities; and
- (4) To establish the level of bond coverage by scaling it to each individual property.

Although these suggested alternatives differ in detail from each other, they are all variations on the alternative of establishing the level of bond coverage on a nonstandard basis. That is, in contrast to MMS's proposal, each of these approaches would require the establishment of the level of bond coverage for each lease individually on the basis of the determining factor(s) such as water depth, level of leasehold activity, or percent of total investment.

These approaches would establish the level of bond coverage required on a

case-by-case basis according to estimates of anticipated well abandonment, platform removal, and site clearance costs. The establishment of the amount of bond coverage required based on a case-by-case evaluation of the actual expected costs of site clearance and abandonment would result in much higher costs to lessees and operators than the proposed or final rule.

The tiered approach established by this final rule is, to some degree, a variable level of bond coverage in that the minimum level of bond coverage required is tied to the activity level on the lease. Increased levels of bond coverage are required as leasehold activity increases (1) upon the approval of an EP authorizing the conduct of exploration activities and (2) upon the approval of a DPP or DOCD authorizing development and production activities.

Alternative approaches calling for variable levels of bond coverage based on other determining factors (i.e., investment level, sliding scale based on the level of leasehold operations, etc.) would require a much higher degree of analysis and evaluation of the amount of bond coverage to be required for each lease. It would also be necessary to recalculate and update the level of bond coverage for each lease as investment levels increase or the type and level of operations change. These individual lease activity analyses would require MMS and OCS lessees and operators to dedicate many more administrative and management resources to the establishment and maintenance of the appropriate levels of lease surety bond coverage.

**Alternate Forms of Securities**—The second alternative for which MMS requested comments and recommendations was that of providing alternate forms of security against a lessee's default in its obligations in lieu of providing a surety bond.

The final rule makes it clear that MMS will accept, in lieu of a surety bond, U.S. Treasury instruments with a negotiable value at the time of submittal equal to the amount of the surety bond that would be required for the particular activities and lease in question.

In addition, the final rule provides that application may be made to the authorized officer for approval of other substitute security instruments. Such approval may be given if the applicant can show that the interests of the Government would be sufficiently protected by the submission of another form of collateral or alternative financial instrument.

**Comment:** Respondents to MMS's request for comments on the submission

of alternate forms of securities favored MMS's acceptance of cash deposits, financial statements, bank letters of credit, and "self suretyship." One respondent proposed the use of a company's "net worth" test in which a letter of credit or a surety bond would be posted with MMS only if a company's assets fell below the estimated amount that would be needed to fund lease abandonment and cleanup. Three respondents opposed the concept of substitute security instruments in lieu of the surety bond. They contended that the surety bonding procedures result in surety companies performing a financial screening function. Alternate security instruments may not provide a comparable screening process.

**Response:** The financial screening process performed by surety companies is recognized as an important service. Under existing regulations, when a substitute surety instrument is provided in the form of U.S. Treasury instruments, there is no financial screening by a third party. The MMS expects only a few lessees to propose alternate forms of security. In those instances, the burden is on the lessee to demonstrate its financial capabilities to MMS's satisfaction. Thus, in those instances, MMS conducts its own screening process.

The support for alternative forms of security was specifically for acceptance of liability insurance and bank letters of credit on the basis that these are more easily obtainable at a lower cost to the lessee or operator than bonds and would tie up less capital and free funds for use in conducting leasehold operations. The MMS recognizes that letters of credit and liability insurance would cost lessees less than surety bonds and has added a provision to the final rule to allow for alternative security instruments to be substituted for the required bond if certain criteria are met.

Unfortunately, these alternative security instruments usually fail to provide an irrevocable and noncancellable assurance by the guarantor that the required actions will be performed in the event a lessee defaults. Letters of credit and insurance policies are operative for specified periods of time and must be renewed periodically (often annually) by the issuing financial institution. If these barriers can be removed or overcome to the satisfaction of the authorized officers, these alternatives may be accepted.

**Creation of a Trust Fund**—An alternative means of providing funds to assume the responsibility for lease abandonment and clearance in cases of default by lessees or operators in the



OCS could be provided by the enactment of legislation to create a Well Abandonment, Platform Removal, and Site Clearance Trust Fund to be subscribed to by all OCS oil and gas lessees.

*Comment:* Twenty-eight of the 32 respondents who specifically addressed this issue supported the idea. This concept was referred to also as an "Abandonment Trust" or a "Contingency Fund." Most supporters suggested that it be funded by surcharges on production or assessments against each lease. One respondent suggested that surcharges be assessed differently for properties in waters less than 300 feet than for properties in waters of more than 300 feet. Another suggested that a trust fund be created by a service charge on drilling and development activities. Three respondents recommended a system similar to the U.S. Coast Guard's (USCG) Offshore Oil Pollution Compensation Fund. One respondent opposed the establishment of a fund on the basis that it would not prevent losses because there is no prequalification of participants such as there is in the bonding process. Another response in opposition to the idea of a contingency fund objected to the establishment of a fund on the basis that responsible and financially capable lessees and operators would in effect be required to "underwrite lessees who default in their obligations."

*Response:* The MMS does not presently have the authority to establish a Well Abandonment, Platform Removal, and Site Clearance Trust Fund. The MMS will continue to look into the advisability of seeking legislation authorizing the use of a trust fund as a supplement to the increased levels of bond coverage provided by this rule.

*Comment:* One suggestion related to the trust fund concept was that the bond requirement be replaced with a proof of financial responsibility, such as the USCG accepted as evidence that offshore operators can meet the \$35 million liability for oil-spill damage and cleanup established in connection with the Offshore Oil Spill Pollution Fund. The provisions in former title III of the OCS Lands Act Amendments of 1978, that require owners or operators of offshore facilities to establish and maintain evidence of financial responsibility in the amount of their liability under the law, could be satisfied by providing evidence of liability insurance in the required amount. The commenters suggested that MMS accept the same evidence in lieu of the bond requirement.

*Response:* Section 256.58(g) of this final rule authorizes the authorized officer to approve the submission of alternate types of securities or collateral in lieu of the required surety bond. The authorized officer may accept an alternate type of security when (1) the authorized officer determines that the interests of the Government are protected to the same extent that these interests would be protected by a surety bond and (2) the substitute security instrument is not limited in its term and is not revocable.

#### Summary of Need for Increased Bond Coverage

The MMS is particularly concerned about the demonstrated potential for the failure of lessees of older leasehold operations in shallow waters (0 to 200 feet) to protect the environment by expeditious and proper well abandonment, platform removal, and site clearance operations. These activities are very high cost operations and are obligations that must be carried out at a time when the lessee's interest in a property is low because of the drilling of a "dry hole" or because the property has been depleted of its resources.

Securing timely payment of royalty due the United States is also one of the functions of a lease bond. However, the risk of a lessee's default in making royalty payments is low during the early stages of production. Late payment charges and civil penalties, together with the fact that future revenues from a lease comprise assets which can be attached to cover unpaid royalty obligations plus interest, combine to protect against the nonpayment of royalty. Where there have been no drilling activities on a lease, the only risk is in the form of a relatively minor loss of income due from default in the making of rental payments.

Therefore, the MMS has focused its attention on the safety of operations and protection of the environment from the damage that could result from a lessee's failure to plug and abandon wells, remove platforms and facilities, and clear the seafloor.

Recent failures of lessees and operators to perform well abandonment or well repairs and restoration of production in a timely manner have forced MMS to more fully identify the magnitude of the existing unfunded financial liabilities of lessees and operators.

The current \$50,000 lease surety bond or \$300,000 areawide bond was established in August 1969. Clearly, this level of bond coverage no longer can provide assurance of safety in OCS

operations and effective protection to the environment.

Given the potential environmental and safety hazards posed by a lessee's failure to promptly and properly abandon wells and remove structures at the end of their useful life, it is incumbent upon MMS to ensure that lessees assure performance through the submission of bonds in an amount which more nearly ensures that the necessary work will be performed by the responsible guarantor should an OCS lessee become financially unable to meet its obligations.

As previously noted, the level of bond coverage required in this final rule is based generally upon the range in estimated costs for OCS well abandonment, platform (structure) removal, and site clearance in relatively shallow water (0 to 200 feet).

The most comprehensive work regarding platform removal costs is found in the 1985 study by the Marine Board of the National Research Council entitled "Disposal of Offshore Platforms." This study was funded by the Department of the Interior (DOI). It derived cost estimates for platform removal by categorizing structures based on the complexity or type of structure, weight of the structure, and water depth.

The cost estimates contained in the Marine Board study cover only removal costs of individual platforms. They do not include the additional financial obligations of OCS lessees to plug and abandon wells and clear the leasehold of obstructions. Typically, it may cost over \$100,000 to abandon a single OCS oil and gas well. The cost per well may be somewhat less where a number of wells are abandoned as one operation. Combined end-of-lease abandonment and clearance costs for a typical developed OCS lease in less than 200 feet of water range from \$3.2 million for leases in 0 to 50 feet of water to \$3.9 million for leases in 101 to 200 feet of water.

These are average costs, not minimum costs. Actual costs vary significantly between leases because of differences in the number of structures, number and depth of wells, water depth, and other factors unique to individual leases. These cost data illustrate the minimum level of financial responsibility which a lessee will need to carry out the end-of-lease oil and gas well abandonments, structure removal, and seafloor clearance required under OCS lease terms. These requirements include considerations of international law and national security requirements associated with surface or subsurface navigation.



The new levels of bond protection required for exploration, development, and production activities will provide a greater level of protection where that protection is most needed without adding an undue burden to OCS lessees and operators. The MMS will continue to explore alternate means to assure that lessees meet their obligations for well abandonment and cleanup costs when producing OCS oil and gas leases cease to produce, and the seafloor must be cleared of obstructions for other uses.

#### Author

This document was prepared by Mary B. McDonald, John V. Mirabella, and Gerald D. Rhodes, Engineering and Technology Division, MMS.

#### Executive Order (E.O.) 12291

The DOI has determined that this rule does not meet any of the criteria for a major rule under E.O. 12291, and therefore, a regulatory impact analysis is not required.

#### Regulatory Flexibility Act

The DOI has determined that this document will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

#### Paperwork Reduction Act

This final rule does not contain new information collection requirements which require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 501 et seq. The information collection requirements under 30 CFR part 256 are approved by OMB under project No. 1010-0006.

#### Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a takings implication assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

#### E.O. 12778

The DOI has certified to OMB that this final regulation meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

#### National Environmental Policy Act

The DOI determined that this rulemaking does not constitute a major

Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

#### List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 1, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, part 256 of title 30 of the Code of Federal Regulations is amended as follows:

#### PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.

2. The heading of part 256 is revised as set forth above.

3. The heading for subpart A is revised to read as follows:

#### Subpart A—Outer Continental Shelf Oil, Gas, and Sulphur Management, General

4. Section 256.0 is revised to read as follows:

#### § 256.0 Authority for information collection.

The collections of information contained in part 256 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB control number 1010-0006. The information will be used to determine if the applicant filing for a lease on the Outer Continental Shelf (OCS) is qualified to hold such a lease. Response is required to obtain a benefit in accordance with 43 U.S.C. 1331 et seq. Public reporting burden for this information is estimated to average 1.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service, Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070-4817, and the

Office of Management and Budget; Paperwork Reduction Project 1010-0006; Washington, DC 20503.

5. In § 256.58, the section heading is revised; paragraphs (a), (c), and (e) are revised; paragraph (f) is redesignated as paragraph (h); and new paragraphs (f) and (g) are added to read as follows:

#### § 256.58 Acceptable bonds/alternate security instruments.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a surety bond in the amount of \$50,000 conditioned on compliance with all the terms and conditions of the lease. A \$50,000 lease surety bond need not be submitted and maintained if the bidder furnishes and maintains an areawide bond in the sum of \$300,000 issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued is situated, furnishes and maintains an areawide bond under § 256.61 (a)(2) or (b)(2) of this part, or submits a substitute security instrument in accordance with paragraphs (f) and (g) of this section.

(c)(1) A lessee shall provide a separate areawide surety bond furnished and maintained pursuant to paragraph (a) of this section, or § 256.61 of this part, or a separate areawide alternate security instrument furnished pursuant to paragraphs (f) or (g) of this section, to secure the performance of lessee's obligation to comply with all the terms and conditions of leases in each of the areas identified in paragraph (b) of this section in which leases are held.

(2) An operator's bond in the same amount as the lease bond required under paragraph (a) of this section, or § 256.61 of this part, or alternate security instruments of the same amount as provided for in paragraphs (f) and (g) of this section, may be substituted at any time for the equivalent lessee's bond. The substitution of an operator's bond or alternate security instrument for a lessee's bond shall not relieve the lessee of its obligation to comply with the terms and conditions of the lease.

(e) If any bond has been reduced by any amount as the result of payment for default, the lessee must post a new bond in at least the amount of the original face value of the reduced bond within 6 months or such shorter period of time as the authorized officer may direct after a default. If the reduced bond is an individual lease bond, the lessee or



operator may replace it with an areawide bond as provided in paragraph (a) of this section or § 256.61 (a)(2) or (b)(2) of this part. Failure to post such a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of the lease(s) covered by the defaulted bond.

(f) U.S. Department of the Treasury (U.S. Treasury) securities (U.S. Bonds or Notes) may be submitted in lieu of a bond, provided the U.S. Treasury instrument or legal tender submitted is negotiable at the time of submission for an amount of cash equal to the value of the required bond.

(g) The authorized officer may approve the submission of alternate types of securities or collateral in lieu of the surety bonds required by this section if:

(1) The authorized officer determines that the interests of the Government are protected to the same extent that these interests would be protected by a surety bond, and

(2) The substitute security instrument is not limited in its term and is not revocable.

\* \* \* \* \*

6. Section 256.59 is revised to read as follows:

**§ 256.59 Bond form.**

All bonds furnished by a bidder, lessee, or operator shall be on a form, or in a form, approved by the Director. Bonds required by this part and submitted after November 26, 1993 shall be issued by a qualified surety company certified by the U.S. Treasury as an acceptable surety on Federal bonds and listed in the current U.S. Treasury Circular No. 570 which is available from Surety Bond Branch, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

7. Section 256.61 is revised to read as follows:

**§ 256.61 Additional bonds.**

(a)(1) A surety bond in the amount of \$200,000 issued by a qualified surety, and conditioned on compliance with all the terms and conditions of the lease, shall be furnished to the authorized officer with a proposed Exploration Plan (EP) or a proposed assignment of a lease with an approved EP submitted for approval on or after November 26, 1993. Approval of the EP or assignment shall be conditioned upon receipt of a lease surety bond in the amount of \$200,000, unless the authorized officer, for good cause, authorizes the submission of the \$200,000 lease exploration bond after the submission of the EP but prior to approval of drilling activities under the

approved EP. This bond coverage may be provided by increasing the bond coverage provided pursuant to § 256.58(a) of this part.

(2) A \$200,000 lease exploration bond pursuant to paragraph (a)(1) of this section need not be submitted and maintained if the lessee either:

(i) Furnishes and maintains an areawide bond in the sum of \$1 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the lease on the OCS for the area in which the lessee is situated; or

(ii) Furnishes and maintains a bond pursuant to paragraph (b)(2) of this section.

(b)(1) A surety bond in the amount of \$500,000 issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the authorized officer with a proposed Development and Production Plan (DPP), Development Operations Coordination Document (DOCD), or a proposed assignment of a lease with an approved DPP or DOCD submitted for approval on or after November 26, 1993. Approval of a DPP, DOCD, or assignment of a lease with an approved DPP or DOCD shall be conditioned on receipt of a lease surety bond in the amount of \$500,000, unless the authorized officer, for good cause, authorizes the submission of the \$500,000 lease development bond after the submission of the DPP or DOCD but prior to the approval of platform installation or drilling activities under the approved DPP or DOCD. The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage of \$200,000 provided under paragraph (a) of this section.

(2) The lessee need not submit and maintain a \$500,000 lease development bond pursuant to paragraph (b)(1) of this section if the lessee furnishes and maintains an areawide bond in the sum of \$3 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the lessee on the OCS for the area in which the lease is situated.

(c) When a lessee can demonstrate to the satisfaction of the authorized officer that wells and platforms can be abandoned and removed and the drilling and platform sites cleared of obstructions for less than the amount of lease bond coverage required under paragraph (b)(1) of this section, the authorized officer may accept a lease surety bond in an amount less than the prescribed amount but not less than the

amount of the cost for well abandonment, platform removal, and site clearance.

(d) The authorized officer may require additional security (i.e., security over and above the amounts prescribed in §§ 256.58(a) and 256.61 (a), (b), and (c) of this part) in the form of a supplemental bond or bonds or increased amount of coverage of an existing surety bond if the authorized officer deems such additional security necessary to cover royalty due the Government or costs and liabilities of the lessee for regulatory compliance, e.g., abandonment of wells, removal of platforms, and clearance of equipment and facilities from the lease once production ceases and the lease expires. The authorized officer shall base the decision on an evaluation of the ability of the lessee to carry out its present and future financial obligations, as demonstrated by factors such as:

(1) Financial capacity of the lessee substantially in excess of existing and anticipated lease and other obligations (including but not limited to well abandonment, platform removal, and royalty due to the Government) as evidenced by audited financial statements including auditor's certificate, balance sheet, and profit and loss sheet;

(2) Projected financial strength as evidenced by existing OCS production and proven reserves of future production valued significantly in excess of existing and future obligations;

(3) Business stability as evidenced by years of successful operation in the OCS or in the oil and gas industry;

(4) Reliability in meeting obligations as evidenced by credit ratings and trade references (for which purpose a lessee shall upon request furnish a list of the names and addresses of lessees, drilling contractors, and suppliers with whom it has dealt); and

(5) Record of compliance with laws, regulations, and lease terms.

8. In § 256.62, paragraph (e) is revised to read as follows:

**§ 256.62 Assignment of leases or interests therein.**

\* \* \* \* \*

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the act including the requirement to furnish surety bonds as specified in OCS leases and §§ 256.58 and 256.61 of this part.

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BILLING CODE 4310-MR-M



## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

## Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

**SUMMARY:** The Bank Secrecy Act, authorizes the Secretary of the Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. The Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. The Secretary has imposed particular reporting and recordkeeping requirements on these casinos. This final rule delays the effective date of the final rule published on March 12, 1993, in the *Federal Register*, 58 FR 13538-13550.

**EFFECTIVE DATE:** The effective date of the final rule ("the Rule") published on March 12, 1993, in the *Federal Register*, 58 FR 13538-13550, dealing with nineteen amendments to the Bank Secrecy Act regulations affecting casinos, is delayed until March 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** A. Carlos Correa, Assistant Director, Rules and Regulations Section, Office of Financial Enforcement, Department of the Treasury, (202) 622-0400.

**SUPPLEMENTARY INFORMATION:** On March 12, 1993, Treasury issued a final rule dealing with amendments to the Bank Secrecy Act regulations affecting casinos. The rule's effective date was September 8, 1993. The purpose of the amendments was to enhance compliance with Bank Secrecy Act requirements, (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5326), and to provide Bank Secrecy Act examiners with "audit trails" to determine the adequacy of compliance.

Treasury has received a request from the Casino Association of New Jersey requesting a delay in the implementation date of the final rule to give their casinos additional time to revise systems and procedures and train employees after the conclusion of the busy summer season. Treasury has decided to delay the implementation date until March 1, 1994, to give all casinos meeting the definition in 31 CFR 103.11(i)(7)(i), an additional six months to comply with the rule. In addition, the final rule will be considered in the course of an ongoing,

comprehensive review of Treasury's anti-money laundering enforcement programs.

Dated: August 20, 1993.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93-20796 Filed 8-26-93; 8:45 am]

BILLING CODE 4810-25-M

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

[Docket No. RM 86-7D]

## Cable Compulsory License; Definition of a Cable System

AGENCY: Copyright Office; Library of Congress.

ACTION: Final regulation; technical amendment.

**SUMMARY:** The Copyright Office is making a technical amendment to its rules in light of its recent decision to postpone the effective date of its regulation regarding the definition of a cable system under the cable compulsory license. Satellite carriers and MDS/MMDS operators, whose royalty payments under the cable license will no longer be accepted by the Copyright Office as of January 1, 1995, may file a written request no later than March 1, 1995 for a refund of past royalties submitted to the Office.

EFFECTIVE DATE: January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** On January 29, 1992, the Copyright Office issued a final regulation in its proceeding regarding the definition of a cable system under the cable compulsory license, 17 U.S.C. 111. 57 FR 3284 (1992). The Office concluded that satellite carriers and MDS/MMDS operators were not eligible for compulsory licensing under section 111, and amended its rules to reflect that conclusion as well as permit satellite carriers and MDS/MMDS operators time in which to request a refund for royalties submitted under section 111 in previous accounting periods. 37 CFR 201.17(k). The Office initially set an effective date of January 1, 1994 for the new regulation.

On July 28, 1993, the Copyright Office issued a policy decision extending the effective date of the § 201.17(k) cable regulation by one year to January 1,

1995. 58 FR 40363 (1993). The Office now makes a technical amendment to the regulation to extend the time period within which to request a refund from March 1, 1994 to March 1, 1995.

## Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.<sup>1</sup>

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

## List of Subjects in 37 CFR Part 201

Cable systems, Cable compulsory license.

## Final Regulation

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended in the manner set forth below.

## PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; 201.7 is also issued under 17 U.S.C. 408, 409, and 410; 201.16 is also issued under 17 U.S.C. 116; 201.17 is also issued under 17 U.S.C. 111; 201.27 and 201.28 are also issued under Pub. L. 102-563, 106 Stat. 4237.

2. Section 201.17(k) is revised to read as follows:

<sup>1</sup> The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act of 1976 (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits" (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.



**§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.**

\* \* \* \* \*

(k) *Satellite carriers and MMDS not eligible.* Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. At its election, any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of the royalties paid by submitting a written request no later than March 1, 1995, addressed to the Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

Dated: August 6, 1993.

Ralph Oman,  
Register of Copyrights.

Approved:  
James H. Billington,  
The Librarian of Congress.

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BILLING CODE 1410-08-F

meeting indicated that some difficulties not originally envisioned were being experienced as vessel designs entered preliminary plan review.

**DATES:**

*Effective Date:* As of August 27, 1993, 46 CFR 171.080(e) in the final rule published at 57 FR 41812 is suspended until February 23, 1994 for all vessels not requiring a SOLAS Passenger Vessel Safety Certificate.

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

**ADDRESSES:** Comments should be submitted in writing to the Executive Secretary, Marine Safety Council (G-LRA-2/3604) (CGD 93-041), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the Office of the Executive Secretary, Marine Safety Council (G-LRA-2), room 3604, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:**

Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division (G-MTH-3), room 1308, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone: (202) 267-2988, telefax: (202) 267-4816.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled *Stability Design and Operational Regulations in the Federal Register* (55 FR 5120).

During the NPRM 60-day comment period, the Coast Guard received 28 letters commenting on the proposed rulemaking. Only two of the 28 letters received included comments on the new damage stability standards for passenger vessels.

On September 11, 1992, the Coast Guard published a final rule entitled *Stability Design and Operational Regulations in the Federal Register* (57 FR 41812) which adopted damage stability requirements for new passenger vessels from the proposed rule.

**Reason for Suspension of Effective Date**

Following implementation of the final rule, the Coast Guard received inquiries questioning the appropriateness of the damage stability standards for new passenger vessels in 46 CFR 171.080(e).

On July 7, 1993, the Coast Guard published a notice in the *Federal Register* to announce a public meeting on August 5, 1993 to discuss what problems were being encountered in complying with the standard and what actions might be appropriate.

At the public meeting, discussions on the application of this requirement to domestic vessels, especially vessels operating in protected and partially-protected waters were held. Comments indicated that unexpected difficulties were being experienced by some designers in complying with the new standard as these new vessel designs began to be reviewed under the new regulation. The Coast Guard believes the development of damage stability regulations is necessary and achievable with minimal design changes. However, questions regarding the specific criteria to be applied in various waters should be addressed before applying what may be, in some instances, an unduly restrictive standard. Therefore, based on the information received at this public meeting, the Coast Guard has decided to temporarily suspend the effectiveness of § 171.080(e) for all vessels not carrying a SOLAS Passenger Ship Certificate, to allow time for further comment from the public and completion of further research into the application of the standard to new domestic passenger vessel designs.

**Drafting Information**

The principal persons involved in the drafting of this notice are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

**Request for Data, Information, and Comments**

This notice encourages the submission of specific information and comments. It is the Coast Guard's goal to propose regulations that will best address both the safety and operational needs of all vessels. All new large U.S. passenger vessels, as defined in 46 CFR 171.045, are required to meet the damage stability standard in 46 CFR 171.080(e). This criteria was based on a standard developed by the International Maritime Organization for application to any passenger vessel allowed to carry 12 or more passengers on an international voyage. The great expansion of river excursion and gambling vessels on protected and partially-protected waters, was not envisioned at the time this requirement was originally proposed for domestic vessels. As a result, further research and investigation

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Part 171**

[CGD 93-041]

RIN 2115-AD33

**Domestic Passenger Vessel Damage Stability Standards**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; suspension of regulation with request for comments.

**SUMMARY:** The Coast Guard announces a 6-month suspension of 46 CFR 171.080(e) in the stability design and operational regulations published on September 11, 1992 at 57 FR 41812 for all vessels not requiring a SOLAS Passenger Ship Safety Certificate. These regulations (CGD 89-037) became effective on December 10, 1992. This section is being suspended for 6 months to allow completion of further research and other investigation based on new information presented during a public meeting held August 5, 1993 on the subject of passenger vessel damage stability standards and the application of Coast Guard regulations in 46 CFR 171.080(e) to domestic passenger vessels. The information presented during the August 5, 1993 public



of the effect of this standard on these vessel types must be completed. Also, from information gathered through the public meeting and written comments, the Coast Guard received indications that other vessel designs intended for service on protected and partially-protected waters were also experiencing unexpected difficulties in complying with the new standard. Therefore, the Coast Guard again seeks input on aspects associated with compliance with § 171.080(e) from vessel owners, operators, naval architects, shipyards, Coast Guard and classification society inspectors, consumers, and others involved with the affected vessels. Interested persons are invited and encouraged to participate by submitting written views, data or arguments.

Persons submitting comments should include their names and addresses, identify this notice (CGD 93-041), identify the specific area of the section to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Receipt of comments will be acknowledged if a stamp self-addressed post card or envelop is enclosed with the comments.

#### Further Actions

The Coast Guard has already begun additional research on the application of this standard to domestic passenger vessels through the Volpe National Transportation Systems Center. Also all comments will be evaluated, including those made in the August 5, 1993 public hearing and those solicited in this notice, before further action is taken. Depending on the outcome of these actions, the Coast Guard may form an industry group of technical design experts to help in the revision of the delayed standard. The Coast Guard expects to publish either a supplemental notice of proposed rulemaking, if the proposed changes are major, or an interim final rule with a new effective date, if the changes are minor. This suspension has been made immediately effective so that current vessel designs will not continue to be based on a standard that has the potential to be changed in the near future.

#### Specific Issues

The Coast Guard requests comment on a number of specific issues. In the comments received to this point, and from the discussion at the August 5, 1993 public meeting, we have identified some areas of the criteria that seem to be causing the difficulties experienced by designers at this time. One problem area seems to be in the application of § 171.080 (e)(1) and (e)(2) to vessels in

service on protected and partially protected waters, especially those which have a barge-type hull. Also, the treatment of downflooding points in § 171.080(e)(2) must be clarified. A second problem area cited is in the application of § 171.080 (e)(4)(i) and (e)(4)(ii) to vessels with an extremely high passenger density operating on exposed waters. Another area of possible difficulties has been in the application of these rules, as a whole, to a novel vessel or one that would be considered as of unusual proportion and form. Each of these areas is discussed in greater detail below so that concern parties can fully address these issues in their comments.

*Issue 1.* The delayed standard requires a range of positive righting arms of at least 15 degrees and a range to downflooding of 15 degrees. Please comment on the need, or lack of need, for each of these requirements, especially for vessels operating solely in protected or partially-protected waters. Where possible, please provide specifics of the recommended change to the standard that you believe will ensure a level of safety equivalency and state a basis for the change.

*Issue 2.* An area under the righting arm curve is specified by the standard. Please comment on the correctness of varying this requirement to compensate for vessels needing a reduction in their range of stability due to their extreme hull form. Please comment on what righting arm area standard you would consider appropriate for vessels of varying route or service.

*Issue 3.* A standard righting arm requirement is set for all passenger vessels when subjected to specific residual righting arms to allow for passenger disembarkation, wind pressure, and survival craft launching. Please comment on whether there should be a reduction of this standard or removal of one or more of these residual righting arms based on vessel route or service. Please include specifics of what you would consider an appropriate alternative level of safety proposal for these vessels.

*Issue 4.* Questions have been received on the appropriateness of this standard to all domestic vessels, including vessels on exposed waters routes. Please comment on whether a comprehensive damage stability standard should be required for domestic vessels on exposed waters routes. Please discuss the reasons why you believe the standard in 46 CFR 170.080(e) is, or is not, appropriate for domestic vessels on exposed water routes. Specify those parts of the criteria that you consider inappropriate for these exposed route

vessels and what you consider an appropriate change.

#### Requirement for Damage Survival on New Passenger Vessels

Paragraph (e) of 46 CFR 170.80, containing the provisions being suspended by this rulemaking, is reproduced below for reference:

(e) *Damage survival for vessels constructed on or after December 10, 1992.* A vessel is presumed to survive assumed damage if it is shown by calculations to meet the conditions set forth in paragraphs (e)(1) through (e)(6) of this section in the final stage of flooding and the conditions set forth in paragraphs (e)(7) and (e)(8) of this section in each earlier stage of flooding as specified:

- (1) Each vessel must have positive righting arms for at least 15 degrees beyond the final angle of equilibrium.
- (2) Each vessel must not have any opening through which progressive flooding can occur within 15 degrees of the angle of equilibrium unless the vessel can meet all survival criteria prescribed in this section after progressive flooding. Openings fitted with effective weathertight closures must be considered as progressive flooding locations if the openings lead to spaces accessible to passengers or the crew.
- (3) Each vessel must have an area under each righting arm curve of at least 2.82 foot-degrees (0.015 meter-radians), measured from the angle of equilibrium to the smaller of the following angles:
  - (i) The angle at which progressive flooding occurs; or
  - (ii) 22 degrees from the upright in the case of one compartment flooding or 27 degrees from the upright in the case of two compartment flooding.
- (4) Each vessel must have a maximum righting arm within 15 degrees of the angle of equilibrium of at least 0.13 feet (0.04 meters) greater than each of the following heeling arms, but in no case less than 0.33 feet (0.10 meters):
  - (i) Passenger heeling moment divided by vessel displacement where the heeling moment is calculated assuming:
    - (A) Each passenger weighs 165 pounds (75 kilograms);
    - (B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and
    - (C) All passengers are distributed on available deck areas towards one side of the vessel on the decks where muster stations are located and in such a way that they produce the most adverse heeling moment.
  - (ii) Asymmetric passenger escape routes heeling moment divided by vessel displacement if the vessel has



asymmetric passenger escape routes where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas in a manner that accounts for the use of any asymmetric passenger escape routes to get to the decks where muster or embarkation stations are located and in such a way that they produce the most adverse heeling moment.

(iii) Launching of survival craft heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) All survival craft, including davit-launched liferafts and rescue boats, fitted on the side to which the vessel heels after sustained damage are swung out if necessary, fully loaded and ready for lowering;

(B) Persons not in the survival craft that are swung out and ready for lowering are centered about the center line so that they do not provide additional heeling or righting moments; and

(C) Survival craft on the side of the vessel opposite to which the vessel heels remain stowed.

(iv) Wind pressure heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) A wind pressure of 2.51 pounds per square foot (120 Newtons per square meter);

(B) The wind acts on an area equal to the projected lateral area of the vessel above the waterline corresponding to the intact condition; and

(C) The wind lever arm is the vertical distance from a point at one-half the mean draft, or the center of area below the waterline, to the center of the lateral area.

(5) Each vessel must have an angle of equilibrium that does not exceed the following:

(i) 7 degrees for one compartment flooding; or

(ii) 12 degrees for two compartment flooding.

(6) The margin line of the vessel must not be submerged in the equilibrium condition.

(7) Each vessel must have a maximum angle of equilibrium that does not exceed 15 degrees during each earlier stage of flooding.

(8) Each vessel must have a maximum righting arm of at least 0.16 feet (0.05 meters) and positive righting arms for a range of at least 7 degrees during each

earlier stage of flooding. Only one breach in the hull and only one free surface need be assumed when meeting the requirements of this paragraph.

Dated: August 20, 1993.

**A.E. Hewm,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93-20886 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

[CC Docket No. 91-213, FCC 93-403]

#### Transport Rate Structure and Pricing

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In order to ensure revenue neutrality in the initial tariff filing implementing the transport rate restructure, the Commission determined that the local exchange carriers (LECs) should compute the interconnection charge using historic demand for all demand components of the formula.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202-632-1304.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Second Memorandum Opinion and Order on Reconsideration in CC Docket No. 91-213, adopted on August 17, 1993 and released on August 18, 1993. This item reconsiders and clarifies matters addressed in Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (Transport Order), 57 FR 54717 (Nov. 20, 1992), recon., First Memorandum Opinion and Order on Reconsideration, FCC 93-366 (released July 21, 1993), 58 FR 41184 (Aug. 3, 1993) (First Reconsideration Order).

The complete text of this Second Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., room 230, Washington, DC 20554.

#### Synopsis of Second Memorandum Opinion and Order on Reconsideration

1. In the Transport Order, we adopted an interim transport rate structure consisting of rate elements for entrance

facilities, direct-trunked transport, tandem-switched transport, and the interconnection charge. We concluded that the interconnection charge should initially be priced on a residual basis so that the transport rate restructure would be revenue neutral for the LECs. In the First Reconsideration Order, we reaffirmed that the interconnection charge was to be revenue neutral. However, because of LEC incentives to project reconfigurations in a manner that would maximize the interconnection charge, and because of the difficulty of evaluating those projections, we concluded that the LECs should be required to use historical facility demand in computing the initial interconnection charge. We permitted LECs to seek mid-course adjustments to the interconnection charge, based in part on reports of actual demand results. In addition, we required the LECs to divide the interconnection charge revenue requirement by the projected number of switched minutes in computing the initial interconnection charge.

2. As noted above, the earlier transport decisions concluded that the transport restructure should be revenue neutral, *i.e.*, during the initial year after the transport rate restructure is implemented, the LECs should have the opportunity to receive the same revenues under the new rate structure they would have received under the equal charge rule. A further review of the methodology adopted in the Reconsideration Order reveals that it would not, in fact, achieve the intended revenue neutrality. To correct a technical defect in the methodology adopted in the Reconsideration Order, we are modifying the requirement that LECs use projected demand in calculating the interconnection charge. In a typical restructure under the price cap rules, historical demand and revenue data would be used to determine compliance with price cap constraints. While the transport restructure adopted in this proceeding is not a typical restructure in many respects, we conclude upon further review that the use of historic revenue and demand data will produce the revenue neutrality for the LECs that we intended for this restructure. Accordingly, we will require the LECs to use historic demand for all demand components of the formula.

3. The use of historical demand will also eliminate the need for a true-up for forecasting errors in estimating the number of minutes used in calculating the rate for the interconnection charge since an estimate of minutes will no longer be used. Thus, the true-up



procedures will only apply to those divergences from historical demand used in initializing demand for facility charges, as discussed in the Reconsideration Order.

4. Accordingly, it is ordered that pursuant to authority contained in sections 1, 4 (i) and (j), 201-205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201-205, 218, 220, and 403, and pursuant to section 1.108 of the Commission's rules, 47 CFR 1.108, the Commission reconsiders its decision in Transport Rate Structure and Pricing, First Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-213, FCC 93-366 (released July 21, 1993), on its own motion to the extent specified herein.

5. It is further ordered that part 69 of the Commission's rules is amended as set forth below.

6. It is further ordered that the decisions and rules adopted herein shall be effective on September 1, 1993.<sup>1</sup>

**List of Subjects in 47 CFR Part 69**

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 69 of title 47, Code of Federal Regulations, is amended as follows:

**PART 69—[AMENDED]**

1. The authority citation for part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.108 is amended by revising paragraph (c) to read as follows:

**§ 69.108 Transport rate benchmark.**

(c) If a telephone company's initial transport rates are based on special access rates with a DS3-to-DS1 benchmark ratio of less than 9.6 to 1, those initial transport rates will generally be suspended and investigated absent a substantial cause showing by the telephone company. Alternatively, the telephone company may adjust its initial transport rates so that the DS3-to-DS1 ratio calculated as described in paragraph (a) of this section of those rates is 9.6 or higher. In that case, initial

<sup>1</sup> Because the tariffing rules governing the tariffs to be filed on September 1, 1993 will become effective on that date, good cause exists to make these related modifications effective on the same date.

transport rates that depart from existing special access rates effective on September 1, 1992 so as to be consistent with the benchmark will be presumed reasonable only so long as the ratio of revenue recovered through the interconnection charge to the revenue recovered through facilities-based charges is the same as it would be if the telephone company's existing special access rates effective on September 1, 1992 were used.

3. Section 69.124 is amended by revising paragraph (b)(1) to read as follows:

**§ 69.124 Interconnection charge.**

(b)(1) For telephone companies not subject to price cap regulation, the interconnection charge shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues from the part 69 transport revenue requirement, and dividing by the total interstate local switching minutes.

[FR Doc. 93-20784 Filed 8-26-93; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 93-146; RM-8231]

**Radio Broadcasting Services; Potts Camp, MS**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 240A to Potts Camp, Mississippi, as that community's first local broadcast service in response to a petition filed by Potts Camp Broadcasting. See 58 FR 31688, June 4, 1993. The coordinates for Channel 240A are 34-35-39 and 89-19-33. There is a site restriction 6.1 kilometers (3.8 miles) south of the community. With this action, this proceeding is terminated.

**DATES:** Effective October 7, 1993. The window period for filing applications for Channel 240A at Potts Camp, Mississippi, will open on October 8, 1993, and close on November 8, 1993.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 93-146, adopted August 4, 1993, and released August 23, 1993. The full text of this Commission decision is available for

inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Potts Camp, Channel 240A.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93-20782 Filed 8-26-93; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 93-118; RM-8219]

**Radio Broadcasting Services; Trenton, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 269C2 for Channel 269A at Trenton, Florida, and modifies the license for Station WCWB(FM) to specify operation on Channel 269C2, at the request of Robert D. Fogel, personal representative of the Estate of William H. Burckhalter. See 58 FR 26947, May 6, 1993. Channel 269C2 can be allotted to Trenton in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 27.4 kilometers (17 miles) southwest at petitioner's desired transmitter site. The coordinates for Channel 269C2 at Trenton are North Latitude 29-35-00 and West Longitude 83-05-50. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** October 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report



and Order, MM Docket No. 93-118, adopted August 4, 1993, and released August 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 269A and adding Channel 269C2 at Trenton.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93-20783 Filed 8-26-93; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 93-101; RM-8201]

#### Radio Broadcasting Services; Pelham, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots Channel 222A to Pelham, Georgia, as that community's first local aural transmission service, at the request of Mitchell County Television. See 58 FR 26089, April 30, 1993. Channel 222A can be allotted to Pelham in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.8 miles) south, in order to avoid a short-spacing to Station WAZE (FM), Channel 221A, Dawson, Georgia, and Station WDDQ (FM), Channel 221A, Adel, Georgia. The coordinates for Channel 222A at Pelham are North Latitude 31-06-07 and West Longitude 84-08-44. With this action, this proceeding is terminated.

**DATES:** Effective October 7, 1993. The window period for filing applications for Channel 222A at Pelham, Georgia,

will open on October 8, 1993, and close on November 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-101, adopted August 3, 1993, and released August 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Pelham, Channel 222A.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93-20781 Filed 8-26-93; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 192, 193, and 195

[Docket No. PS-131; Amdts. 192-68, 193-8, and 195-48]

RIN 2137 AC13

#### Update of Standards Incorporated by Reference; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction of final rule document.

**SUMMARY:** This document corrects a final rule published on Thursday, March 18, 1993 (FR Doc. 93-6257). The final rule updated references to documents incorporated in 49 CFR parts 192, 193, and 195.

**EFFECTIVE DATE:** April 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Christina M. Sames, (202) 366-4561.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 18, 1993, RSPA published a final rule document titled, "Update of Standards Incorporated by Reference" (51 FR 14519). This final rule updated the editions of documents incorporated by reference in 49 CFR parts 192, 193, and 195 to more recent published editions. The final rule also deleted from the lists of documents incorporated by reference those documents that were no longer referenced.

The heading of the final rule document had an incomplete agency number. The following amendment designations were omitted from the agency number: Amdts. 192-68, 193-8, and 195-48.

The final rule clarified § 192.153(b) by adding "section VIII, Division 1, or section VIII, Division 2 of" prior to "the ASME Boiler and Pressure Vessel Code." This clarification should have read "section I, section VIII—Division 1, or section VIII—Division 2 of". The ASME Boiler and Pressure Vessel Code, section I should have also been added to the list of ASME document in appendix A to part 192.

Finally, the document, National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code," which is incorporated by reference in 49 CFR 192.735, was inadvertently removed from the list of NFPA documents in appendix A to part 192. The referenced edition of this document should have been updated to the 1990 edition.

#### Correction of Publication

Accordingly, the final rule document published on March 18, 1993 (FR Doc. 93-6257) is corrected as follows:

1. On page 14519, in the first column, in the document heading, the agency number "[Docket No. PS-131]" is corrected to read "[Docket No. PS-131; Amdts. 192-68, 193-8, and 195-48]".

#### § 192.153 [Corrected]

2. On page 14521, in the second column, § 192.153(b), line 4, insert "section I," after "accordance with".

#### Appendix A—[Corrected]

3. On page 14522, in the first column, appendix A to part 192, section II, paragraph C. is corrected by redesignating subparagraphs 3., 4., and 5. as 4., 5., and 6., respectively; and by adding subparagraph 3. as follows:



3. ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1992 with Interpretations, Volume 30, dated July 1992).

4. On page 14522, in the first column, appendix A to part 192, section II, paragraph E, is corrected by redesignating subparagraphs 1., 2., and 3. as 2., 3., and 4. respectively; and by adding subparagraph 1. as follows:

1. ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1990).

Issued in Washington, DC, on August 20, 1993.

Rose A. McMurray,

Acting Administrator for the Research and Special Programs Administration.

[FR Doc. 93-20649 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 930236-3210; I.D. 011293A]

#### Designated Critical Habitat; Steller Sea Lion

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

ACTION: Final rule.

**SUMMARY:** Pursuant to the Endangered Species Act (ESA), NMFS is designating critical habitat for the Steller (northern) sea lion (*Eumetopias jubatus*) in certain areas and waters of Alaska, Oregon and California. The direct economic and other impacts resulting from this critical habitat designation, over and above those arising from the listing of the species under the ESA, are expected to be minimal.

The primary benefit of this designation of critical habitat is that it provides notice to Federal agencies that a listed species is dependent on these areas and features for its continued existence and that any Federal action that may affect these areas or features is subject to the consultation requirements of section 7 of the ESA.

**EFFECTIVE DATE:** September 27, 1993.

**ADDRESSES:** Requests for copies of this rule or the Environmental Assessment should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steven Zimmerman, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802, (907) 586-7235, or Mr. Michael

Payne, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Background

Counts of Steller sea lions on rookeries and major haulouts during the breeding season have indicated that extensive declines have occurred within the Alaskan and the Russian portions of their range over the last 30 years. A 1989 range-wide survey of Steller sea lions indicated that about 70 percent of the Steller sea lion population during the summer resides in Alaska (Loughlin, Perlov and Vladimirov 1992). A series of counts in the Gulf of Alaska (GOA) and the Bering Sea/Aleutian Islands (BSAI) between the mid-1970s and 1991 indicated a 70 percent decline in the Alaskan portion of the population over this time period (Merrick, Calkins, and McAllister 1992). Counts in Southeast Alaska, British Columbia, and Oregon have remained stable over the same period; Steller sea lion numbers in California have declined. The causes of the Steller sea lion population decline are unknown. Potential causative factors include disease, incidental takes in fishing gear, direct mortality (shooting), and natural or human induced changes (through fishing) in the abundance and species composition of the sea lion prey (Merrick, Loughlin and Calkins 1987, Loughlin and Merrick 1989).

Because of the drastic population decline, NMFS issued an emergency interim rule on April 5, 1990, (55 FR 12645), which listed the Steller sea lion as a threatened species throughout its range and imposed protective measures. The final rule listing the Steller sea lion as threatened (55 FR 49204, Nov. 26, 1990) became effective on December 4, 1990, and imposed protective measures very similar to those established by the emergency interim rule (50 CFR 227.12). These protective measures were intended to reduce sea lion mortality, to restrict opportunities for unintentional harassment of sea lions, and to minimize disturbance and interference with sea lion behavior, especially at pupping and breeding sites.

On April 1, 1993 (58 FR 17181), NMFS published a proposed rule to designate critical habitat for the Steller sea lion. NMFS also completed an environmental assessment (EA) pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designation. The preamble to the proposed rule outlines previous federal

actions, including the recovery plan, and describes the procedures and criteria used to designate critical habitat.

After consideration of public comments, NMFS is designating critical habitat for the Steller sea lion as described in the proposed rule.

##### Essential Habitat of the Steller Sea Lion

Available biological information for the listed Steller sea lion can be found in the final recovery plan (NMFS 1992). The physical and biological habitat features that support reproduction, foraging, rest, and refuge are essential to the conservation of the Steller sea lion. For the Steller sea lion, essential habitat includes terrestrial, air and aquatic areas.

##### Terrestrial Habitat

Because of their traditional use and the relative ease of observation, terrestrial habitats are better known than aquatic habitats. Steller sea lion rookeries and haulouts are widespread throughout their geographic range (figure 1) and the locations used change little from year to year. Factors that influence the suitability of a particular area include substrate, exposure to wind and waves, the extent and type of human activities and disturbance in the region, and proximity to prey resources (Mate 1973).

The best known Steller sea lion habitats are the rookeries (Table 1), where adult animals congregate during the reproductive season for breeding and pupping. Rookeries are defined as those sites where males defend a territory and where pupping and mating occurs on a consistent annual basis. Rookeries typically occur on relatively remote islands, rocks, reefs, and beaches, where access by terrestrial predators is limited. A rookery may extend across low-lying reefs and islands, or may be restricted to a relatively narrow strip of beach by steep cliffs. Rookeries are occupied by breeding animals and some subadults throughout the breeding season, which extends from late May to early July throughout the range. Female sea lions frequently return to pup and breed at the same rookery in successive years (Gentry 1970), and this site may be the same rookery, or approximate rookery (same island) as the female's natal site (Calkins and Pitcher 1982).

Steller sea lion rookeries are found from the central Kuril Islands around the Pacific Rim of the Aleutian Islands to Prince William Sound (Seal Rocks, at the entrance to Prince William Sound, Alaska, is the northernmost rookery) and south along the coast of North



America to Ano Nuevo Island, California, the southernmost rookery (figure 1). Loughlin, Rugh and Fiscus (1984) identified 51 Steller sea lion rookeries; since that time two additional rookeries have been identified in southeastern Alaska (Hazy Islands and White Sisters), bringing the total to 53 (43 of which are within U.S. borders). Historically, the largest rookeries occurred in the central and eastern Aleutian Islands, and the western and central GOA (Kenyon and Rice 1961; Loughlin, Rugh and Fiscus 1984; Loughlin, Perex and Merrick 1987). Because of drastic declines in pup production at the GOA and Aleutian Islands rookeries, the Forrester Island rookery in southeastern Alaska has been the largest annual producer of pups in recent years.

Haulouts (Table 2) are areas used for rest and refuge by all ages and both sexes of sea lions during the non-breeding season and by non-breeding adults and subadults during the breeding season. Sites used as rookeries in the breeding season may also be used as haulouts during other times of the year. Many rocks, reefs, and beaches are used as haulout sites; Steller sea lions are also occasionally observed hauled out on sea ice and manmade structures, such as breakwaters, navigational aids, and floating docks.

A total of 105 major haulouts have been identified in Alaska. Major haulouts were defined by the Recovery Team as sites where more than 200 animals have been counted at least once since 1970. There are many more haulout sites throughout the range that are used by fewer animals or may be used irregularly.

#### Aquatic Habitat

Although they are most commonly seen and studied while on land, Steller sea lions spend most of their time at sea. The principal, essential at-sea activity presumably is feeding.

#### Nearshore Waters Around Rookeries and Haulouts

For regulatory purposes, the waterward boundary of rookeries and haulouts has been defined as the mean lower-water mark. However, biologically, the boundaries are not easily delineated. Nearshore waters surrounding rookeries and haulouts are an integral component of these habitats. Animals must regularly transit this region as they go to, and return from, feeding trips. As pups mature, they spend an increasing amount of time in waters adjacent to rookeries, where they develop their swimming ability and other aquatic behaviors. Waters

surrounding rookeries and haulouts also provide a refuge to which animals may retreat when they are displaced from land by disturbance.

#### Rafting Sites

In addition to rookeries and haulouts, sea lions also use traditional rafting sites. These are locations where the animals rest on the ocean surface in a tightly-packed group (Bigg 1985). Although the reasons for rafting are not fully understood, the widespread use and traditional nature of these sites indicate that they are an essential part of Steller sea lion habitat.

#### Food Resources

Adequate food resources are an essential component of the Steller sea lion's aquatic habitat. Steller sea lions are opportunistic carnivores that prey predominantly upon demersal and off-bottom schooling fishes. Invertebrates, e.g., squid and octopus, also appear to be regular components of their diet (Pitcher 1981). Prey consumption is expected to vary geographically, seasonally, and over years in response to fluctuations in prey abundance and availability (Pitcher 1981; Hoover 1988).

Data on Steller sea lion prey consumption are fairly limited. Results of limited diet studies conducted in Alaska since 1975 indicate that walleye pollock (*Theragra chalcogramma*) has been the principal prey in most areas over this time period, with Atka mackerel (*Pleurogrammus monopterygius*), Pacific cod (*Gadus macrocephalus*), octopus (*Octopus* sp.), squid (*Goniatidae*), Pacific herring (*Clupea harengus*), Pacific salmon (*Onchorhynchus* spp.), capelin (*Mallotus villosus*), and flatfishes (*Pleuronectidae*) also consumed (Pitcher 1981; Calkins and Pitcher 1982; Calkins and Goodwin 1988; Lowry et al. 1989). In recent years Atka mackerel appears to be the principal prey consumed in the Aleutian Islands (Merrick 1993 unpublished data). Few data are available on Steller sea lion prey preferences in Alaska prior to 1975; however, those data available indicate that pollock may have been a less important component of the diet in previous years (Fiscus and Baines 1966; Pitcher 1981). Limited food habitat data from California and Oregon show a predominance of rockfish (*Scorpaenidae*) and hake (*Merluccius productus*) in the diet, with flatfish, squid, octopus, and lamprey (*Lampetra tridentatus*) also eaten.

#### Foraging Habitats

Specific foraging areas, and their constancy over time, have not been well

defined. NMFS' ongoing studies in the central GOA and Aleutian Islands using satellite telemetry are providing more detailed information on feeding areas and diving patterns in Alaskan waters. The following summarizes the findings to date: NMFS has deployed 52 satellite-linked time depth recorders on Steller sea lions since 1989. The results of this tagging indicate that waters in the vicinity of rookeries and haulouts are important foraging habitats, particularly for post-parturient females and young animals. These investigations strongly suggest that sea lion foraging strategies and ranges change seasonally, and according to the age and reproductive status of the animal.

Summertime foraging by postpartum females, whose foraging range is probably restricted by the need to return to the rookery to nurse pups, appears to occur mainly in relatively shallow waters within 20 nm of the rookeries. Data from tagged animals without pups and females with pups during the winter indicate that adult sea lions have the ability to forage at locations far removed from their rookeries and haulout sites, and at great depths. Sea lion pups by their sixth month are also capable of traveling extended distances from land. However, dive depth appears to be more limited, and may restrict foraging success. Few observed dives by juvenile sea lions (younger than 11 months) have exceeded 20 meters (m), whereas adults have been observed diving to depths greater than 250 m.

#### Need for Special Management Considerations or Protection

The following discussion outlines specific essential habitats that may require special management considerations or protection. In particular, rookeries, haulouts, and prey availability in certain areas may require special management considerations. Under separate rulemakings, NMFS has already determined that certain Steller sea lion habitats require special management protection, and has limited human activities in these areas. These management actions and the essential habitats they protect are also described below.

#### Terrestrial Habitats

The use of traditional sites by Steller sea lions, and the link of territorial males, postpartum females, and pups to rookery sites during the breeding season make them particularly vulnerable to harassment. Observed responses to human disturbance vary from no reaction at all to mass stampedes into the water. In some cases, haulout sites have been completely abandoned after



repeated disturbances, whereas in other cases sea lions have continued to use sites even after extreme harassment (Hoover 1988). The remote locations of most rookeries and haulouts help to reduce the frequency of harassment, but disturbance of sea lions by air and water craft continues to occur. Steller sea lions are vulnerable to harassment and disruption of essential life functions (e.g., breeding, pup care, and rest) at rookeries and haulouts throughout their range.

#### Aquatic Habitats

##### Nearshore Waters Around Rookeries and Haulouts

Nearshore waters associated with terrestrial habitats are subject to the same types of disturbance as rookeries and haulouts. NMFS has prohibited vessel entry within 3 nm of all Steller sea lion rookeries west of 150° W. longitude, the area where the greatest population decline has occurred, primarily to protect sea lions using these habitats from intentional and unintentional harassment. The Recovery Team recommended that waters extending 3,000 feet (0.9 km) from rookeries and major haulouts throughout the range of Steller sea lions be considered essential habitat that merits special management consideration.

##### Rafting Sites

Available information is not sufficient to identify any specific rafting sites that are in need of special management consideration. Therefore, rafting sites are not included in this critical habitat designation.

##### Prey Resources and Foraging Habitats

Reduction in food availability, quantity, and/or quality is considered to be a possible factor in the Steller sea lion population decline (Calkins and Goodwin 1988; Merrick, Loughlin and Calkins 1987; Loughlin and Merrick 1989; Lowry, Frost and Loughlin 1989). Most of the data on proximate causes of the Alaska sea lion decline point to reduced juvenile survival as a significant causative agent. There are also indications that decreased juvenile survival is due to a lack of food post-weaning and during the winter/spring of the first year. Calkins and Goodwin (1988) found that Steller sea lions collected in the GOA in 1985-1986 were significantly smaller (girth, weight, and standard length) than same-aged animals collected in the GOA in the 1970s. Reduced body size at age was interpreted as an indicator of nutritional stress.

Conservation and management of prey resources and foraging areas appears essential to the recovery of the Steller sea lion population. The quality and quantity of these resources may be degraded by human activities, e.g., pollutant discharges, habitat losses associated with human development, and commercial fisheries. Available data indicate that contamination of sea lion food resources by anthropogenic pollutants has not been a significant factor in the Steller sea lion decline. Changes in prey base due to physical habitat alteration also appear insignificant. Local degradation of sea lion food resources may occur near human population centers, along shipping lanes, and near drill sites. Presently, there is insufficient information to identify any specific geographic areas where additional management measures to protect sea lion food resources from contaminant inputs and habitat loss, beyond the existing state and Federal regulations, are necessary.

The relationship between commercial fisheries and the ability of Steller sea lions to obtain adequate food is unclear. The BSAI/GOA geographic region where Steller sea lions have experienced the greatest population decline is also an area where large commercial fisheries have developed. Many of the Steller sea lion's preferred prey species are harvested by commercial fisheries in this region, and food availability to Steller sea lions may be affected by fishing. At present, NMFS believes that the exploitation rates in federally managed fisheries are unlikely to diminish the overall abundance of fish stocks important to Steller sea lions. However, spatial and temporal regulation of fishery removals in some areas has been determined to be necessary to ensure that local depletion of prey stocks does not occur.

No definitive description of Steller sea lion foraging habitat is possible. However, available data from satellite telemetry studies indicate that nearshore waters proximal to rookeries and haulouts are important foraging zones for females with pups during the breeding season and yearlings in the non-breeding season. Because of concerns that commercial fisheries in these essential sea lion habitats could deplete prey abundance, NMFS amended the BSAI and GOA groundfish fishery management plans. Under the Magnuson Act, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries

during the BSAI winter pollock roe fishery to mitigate concentrated fishing effort on the southeastern Bering Sea shelf and in Seguam Pass; and (3) placed spatial and temporal restrictions on the GOA pollock harvest to divert some fishing effort away from sea lion foraging areas and to spread effort over the calendar year. NMFS has seasonally expanded the 10 nm no-trawl zone around Ugamak Island in the eastern Aleutians to 20 nm (58 FR 13561, Mar. 12, 1993). The expanded seasonal "buffer" at Ugamak Island better encompasses Steller sea lion winter habitats and juvenile foraging areas in the eastern Aleutian Islands region during the BSAI winter pollock fishery.

Three large aquatic foraging areas have been identified through foraging studies, historical observations of Steller sea lions, and current observations of the distribution of their prey. Seguam Pass, in the Aleutian Islands, is a major area of concentration of Atka mackerel. Prior to the implementation of trawl prohibition areas around rookeries near Seguam Pass, a large portion of the Atka mackerel harvest occurred there. The Bogoslof area, including the Unimak Pass and eastern Bering Sea shelf, is known to support dense aggregations of spawning walleye pollock. Shelikof Strait, in some years, also supports large spawning concentrations of walleye pollock. Survival of pollock larvae and juveniles in the Gulf of Alaska is thought by some to be dependent upon the southwestward transport of larvae from spawning grounds in Shelikof Strait to suitable nursery grounds along the Alaska Peninsula (Lloyd and Davis 1989). These areas also contain, or are adjacent to, Steller sea lion rookeries and haulouts.

Through past regulatory actions, NMFS determined that aquatic habitats and prey resources in the vicinity of GOA and BSAI sea lion rookeries, in Seguam Pass, and on the southeastern Bering Sea shelf are essential to Steller sea lions, and are in need of special management considerations and/or protection. These aquatic habitats are identified as critical habitat.

NMFS is also designating other foraging habitats, e.g., within 20 nm of major haulouts and Shelikof Strait, that may be in need of management although no specific restrictions are being considered at this time. Monitoring of fishery harvests and Steller sea lion research in these habitats will continue.

Essential Steller sea lion prey resources and foraging habitats also occur outside of the GOA and BSAI. However, declines in Steller sea lions generally are less severe in the areas to the east of 144° W. longitude and



information concerning specific foraging areas and special management needs does not exist at this time.

#### Activities That May Affect Essential Habitat

A wide range of activities by several private, state, and Federal agencies may affect the essential habitats of Steller sea lions. Specific human activities that occur within or in the vicinity of the essential sea lion habitat defined above, and that may disrupt the essential life functions that occur there, include, but are not limited to: (1) Wildlife viewing (primarily south-central and southeastern Alaska and California); (2) boat and airplane traffic (throughout the range of the Steller sea lion); (3) research activities (on permitted sites and during specified times throughout the year); (4) commercial, recreational, and subsistence fisheries for groundfish, herring, salmon, and invertebrates, e.g., crab, shrimp, sea urchins/cucumbers (throughout the range of the Steller sea lion); (5) timber harvest (primarily southeastern and south-central Alaska); (6) hard mineral extraction (primarily southeastern Alaska); (7) oil and gas exploration (primarily Bering Sea and GOA); (8) coastal development, including pollutant discharges (specific sites throughout range); and (9) subsistence harvest (Alaska).

Federal agencies whose actions may affect essential sea lion habitats and will most likely be affected by this critical habitat designation include, but are not necessarily limited to: (1) The U.S. Department of Interior, Bureau of Land Management, Minerals Management Service (MMS), National Park Service, and U.S. Fish and Wildlife Service; (2) the U.S. Department of Agriculture, Forest Service; (3) the U.S. Environmental Protection Agency (EPA); (4) the U.S. Department of Transportation, Coast Guard; (5) the U.S. Department of Defense, including the Navy and Air Force; and (6) primarily, the U.S. Department of Commerce, NMFS. Other users will not be affected by critical habitat designation unless their activities are authorized or carried out by Federal agencies.

#### Expected Impacts of Designating Critical Habitat

There are no inherent restrictions on human activities in an area designated as critical habitat. A critical habitat designation directly affects only those actions authorized, funded, or carried out by Federal agencies. Under section 7 of the ESA, Federal agencies in consultation with NMFS, are required to ensure that their actions are not likely

to result in the destruction or adverse modification of Steller sea lion critical habitat. It should be noted that activities conducted outside of designated critical habitat that may affect critical habitat and could be subject to the consultation requirement. Such effects should be anticipated if the activity may impact an essential feature identified in the critical habitat designation.

In many cases, the primary benefit of the designation of critical habitat is that it provides specific notification to Federal agencies that a listed species is dependent on a particular area or feature for its continued existence and that any Federal action that may affect that area or feature is subject to the consultation requirements of section 7 of the ESA. This designation would require Federal agencies to evaluate their activities with respect to Steller sea lion critical habitat and to consult with NMFS prior to engaging in any action that may affect the critical habitat. This designation may assist Federal agencies in evaluating the potential environmental impacts of their activities on Steller sea lions and their critical habitat, and in determining when consultation with NMFS would be appropriate.

Regardless of this critical habitat designation, Federal agencies active within the range of the Steller sea lion are required to consult with NMFS regarding projects and activities that may affect the species pursuant to the jeopardy clause of section 7 of the ESA. Under that provision, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of the species.

It is difficult to separate the concept of jeopardy from the destruction or adverse modification of critical habitat. Activities that result in the destruction or adverse modification of critical habitat are also very likely to jeopardize the continued existence of the species, given the definitions specified in 50 CFR 402.02, regardless of any official critical habitat designation or the absence of such a designation. NMFS has already reinstated ESA section 7 consultation on Federal actions that occur within the range of the Steller sea lion, including those that occur within the critical habitat areas. Federal activities for which ESA section 7 consultations have been reinstated/ conducted include: (1) Federally managed fisheries; (2) MMS Outer Continental Shelf (OCS) lease sales (areas being considered by MMS for oil and gas lease sales during the 1992-1997 period include portions of critical habitat in Shelikof Strait and the Bogoslof Island area); (3) U.S. Forest

Service timber harvest and mineral extraction proposals; (4) EPA waste discharge permits; (5) U.S. Army Corps of Engineers section 10/404 permits; and (6) U.S. military activities.

ESA section 7 consultations on the Federally managed groundfish fisheries of the BSAI and GOA management areas have resulted in changes in the manner in which these fisheries are prosecuted, specifically to protect Steller sea lions and their essential habitats. Economic effects attributable to these regulations were analyzed in the environmental assessments and other regulatory documents produced in support of those decisions.

The designation of critical habitat will not directly affect state and local government activity, or private actions unless there is some Federal involvement. The designation will help, however, to inform these agencies and the public of the importance of these habitat areas to Steller sea lions.

NMFS prepared an Environmental Assessment (EA), based on the best available information, that describes the environmental and economic impacts of alternative critical habitat designations.

This action identifies and delineates critical habitat for the Steller sea lion. Designation of these areas as critical habitat is intended to maintain and/or enhance, rather than to use, a resource. No adverse environmental impacts from the designation of critical habitat are expected. Rather, the designation may enhance the long-term productivity of these areas by ensuring that a Federal agency's actions will not result in the adverse modification or destruction of critical habitat for the Steller sea lion.

#### Designated Critical Habitat: Essential Features

NMFS, by this final rule, designates certain rookeries and haulouts and associated areas, as well as three special foraging areas as critical habitat for the Steller sea lion. These areas are considered essential for the health, continued survival, and recovery of the Steller sea lion population, and may require special management consideration and protection.

In Alaska, major Steller sea lion rookeries, haulouts and associated terrestrial, air, and aquatic zones are designated as critical habitat. Critical habitat includes a terrestrial zone extending 3,000 feet (0.9 km) landward from each major rookery and haulout. Critical habitat also includes air zones extending 3,000 feet (0.9 km) above these terrestrial zones and aquatic zones. Aquatic zones extend 3,000 feet (0.9 km) seaward from the major rookeries and haulouts east of 144° W.



longitude. The aquatic zone extends 20 nm (37 km) seaward for major rookeries and haulouts west of 144° W. longitude.

Rookeries and haulouts in Alaska are within the historical center of Steller sea lion abundance, and have experienced the greatest decline. Aquatic areas surrounding major rookeries and haulout sites provide foraging habitats, prey resources, and refuge considered essential to the conservation of Steller sea lions. The critical habitat surrounding each BSAI and GOA rookery and major haulout site includes not only the aquatic areas adjacent to rookeries that are essential to lactating females and juveniles, but also encompasses aquatic zones around major haulouts, which provide foraging and refuge habitat for non-breeding animals year-round and for reproductively mature animals during the non-breeding season. These areas are considered critical to the continued existence of the species throughout their range since they are essential for reproduction, rest, and refuge from predators and human-related disturbances.

In California and Oregon, major Steller sea lion rookeries and associated air and aquatic zones are designated as critical habitat. Critical habitat includes an air zone extending 3,000 feet (0.9 km) above rookery areas historically occupied by sea lions. Critical habitat also includes an aquatic zone extending 3,000 feet (0.9 km) seaward.

There are no rookeries in Washington state waters. A 3,000 foot "buffer zone" landward of rookeries in Oregon and California would not be appropriate, generally, for these sites. These rookeries are, for the most part, small offshore rocks and outcroppings where upland boundaries are not applicable due to the small size of the site. Haulout sites in Washington, Oregon and California have not been identified as Steller sea lion critical habitat.

Critical habitat designations for rookeries, haulouts, and associated areas are consistent with recommendations of the Recovery Team, except that rookeries and haulouts outside of U.S. waters have not been included (50 CFR 424.12(h)) and 20 nm aquatic zones around rookeries and haulouts west of 144° W. have been designated. The designations are also consistent with the intent of protective measures developed by NMFS at the time the species was listed as threatened (55 FR 49204, Nov. 26, 1990).

In addition to rookeries, haulouts, and associated areas, NMFS designates three special aquatic foraging areas as critical habitat for the Steller sea lion. The first is located in the GOA (Shelikof Strait)

(figure 2), and the other two are located in the BSAI area (Bogoslof Island area and Seguam Pass) (figures 3 and 4). These sites were selected because of their geographic location relative to Steller sea lion abundance centers, their importance as Steller sea lion foraging areas, their present or historical importance as habitat for large concentrations of Steller sea lion prey items that are essential to the species' survival, and because of the need for special consideration of Steller sea lion prey and foraging requirements in the management of the large commercial fisheries that occur in these areas.

The aquatic foraging sites in the GOA and BSAI are the same as those that were recommended by the Recovery Team for critical habitat designation with one modification. The designated area on the southeastern Bering Sea shelf that includes Bogoslof Island is larger than that recommended by the Recovery Team. This enlarged area better incorporates the walleye pollock spawning area to the north and east of Unimak Pass and encompasses a diverse oceanographic region with high concentrations of important sea lion food resources, e.g., walleye pollock, eulachon, capelin, and migrating herring, as well as intense commercial fisheries for these prey resources.

Modifications to this critical habitat designation may be necessary in the future as additional information becomes available.

#### References

A list of references is included in the Environmental Assessment (EA) and available upon request (see ADDRESSES).

#### Comments and Responses

On April 1, 1993, NMFS proposed to designate critical habitat for the Steller sea lion under the ESA, and provided a 60-day comment period (58 FR 17181). NMFS convened a public hearing in Anchorage, Alaska, on July 9, 1993, and extended the comment period on the proposed rule to designate critical habitat for the Steller sea lion until July 19, 1993 (58 FR 34238, June 24, 1993).

During the comment periods and at the public hearing, a total of 28 sets of comments were received. Commenters represented 29 organizations, including 9 government agencies, 4 private groups, 15 fishing industry organizations and 1 private oil company. A compilation of these comments are addressed below.

#### Comments on Designation of Rookeries and Haulouts

**Comment 1:** The State of Alaska Division of Governmental Coordination

(ADoGC) and Department of Fish and Game (ADF&G) supported Steller sea lion critical habitat designation, and agreed that all Steller sea lion rookeries and major haulouts constitute critical habitat. However, they urged adoption of a seaward boundary of 3000 feet for rookeries and haulouts throughout the range, as proposed by the Steller Sea Lion Recovery Team. The ADoGC suggested the 20 nm zones west of 144° W. longitude placed a greater burden on Alaska despite the lack of human habitation in the area as compared to other parts of the Steller sea lion's range. The ADF&G suggested that the 20 nm zones around rookeries and haulouts were inappropriate because they were based on satellite telemetry data from only a few locations. They indicated these zones did not represent the areas in coastal and offshore waters that contain appropriate environmental and biological characteristics to provide important feeding habitats for sea lions from several rookeries and haulouts. ADF&G recommended critical habitat be of sufficient size to be meaningful while allowing appropriate controls on human activities that may affect sea lion habitat. ADF&G suggested NMFS identify foraging areas, such as the 3 large marine areas proposed, according to ecological factors rather than proximity to haulouts or existing regulatory mechanisms. Both agencies indicated NMFS did not supply sufficient documentation to justify the designation of 20 nm areas around rookeries and haulouts as critical habitat.

ADoGC recommended NMFS designate critical habitat at Steller sea lion rookeries and haulouts, seaward to 3000 feet, and recommended withdrawal of the extended areas around haulouts and rookeries until: (1) A firm scientific basis can be shown which justifies additional designations and (2) NMFS conforms with all procedural requirements. Additionally, an illustration of the areas identified as critical habitat was suggested to assist in envisioning the way the haulout and rookery areas relate to the marine foraging areas. Three additional commenters supported this suggestion.

**Response:** With respect to the first point, NMFS has determined that the 20 nm aquatic zones around major rookeries and haulouts in Alaska west of 144° W. longitude are warranted given the geographic concentration and distribution of Steller sea lions, the rates of observed declines in Steller sea lions in various areas, the importance of prey resources in aquatic areas, possible impacts of commercial fishing operations, and the fact that these



extended areas may be in need of management.

NMFS agrees that critical habitat designation needs to represent meaningful areas. Consequently, NMFS is not designating the Steller sea lion's entire range, but rather is focusing attention on particular areas that have essential features and that may be in need of management.

The Steller sea lion recovery team recommended two types of habitat for designation, terrestrial (rookeries and haulouts) and aquatic areas. The team indicated an area of minimal disturbance near rookeries and haulouts was an important physical feature to be considered in designating critical habitat. Thus, a 3000 ft aquatic zone around rookeries and haulouts was suggested as a sufficient "buffer" area to minimize disturbance or harassment of the Steller sea lions at rookeries and haulouts. However, availability of prey resources is also an essential biological feature of aquatic habitat that NMFS believes must be considered in designating critical habitat. The importance of prey resources, as well as other features, is summarized in the "Essential Habitat of the Steller sea lion" section of this preamble and in the proposed rule.

The foraging habits and food needs of Steller sea lions is not completely understood, however, ongoing satellite telemetry studies indicate Steller sea lions forage in shallow waters within 20 nm of rookeries in summer months (NMML unpublished data). Concerns about the availability of prey resources and the relationship between these resources and commercial fishing operations, especially in areas near rookeries and haulouts, are summarized in the "Need for Special Management Considerations or Protection" section of this preamble and in the proposed rule.

Furthermore, NMFS has determined that the 20 nm aquatic zones around major rookeries and haulouts in Alaska west of 144° W. longitude may be in need of management. It is important to emphasize that in designating these extended aquatic zones, NMFS is not attempting to justify or prove that these areas, in fact, actually do need special management or specific regulation, but rather that these areas may be in need of management. Of course, currently the commercial groundfish fisheries throughout the BSAI and GOA are being managed under the Magnuson Fishery Conservation and Management Act and associated fishery management plans and regulations. Specific fishery management restrictions near certain rookeries are described in the proposed rule.

At this point, NMFS is not recommending additional special management measures for these extended aquatic zones except for further research and monitoring. For example, research is planned concerning Steller sea lion foraging behavior proximal to rookeries and haulouts, including additional satellite telemetry studies. Modification of critical habitat designation or specific management measures may be considered based upon this research.

This final rule does not include specific management measures and no additional burden on the State of Alaska is anticipated as a result of the designation of these extended aquatic zones as critical habitat. If and when specific management measures are proposed, it is anticipated that the proposed rule will explain the scientific basis and justification for the measures.

With respect to the second point, NMFS acknowledges that certain procedural requirements were not followed upon publication of the proposed rule. All notification requirements of 50 CFR 424.16(b) have now been satisfied.

Finally, NMFS agrees with ADoGC and others' recommendation that illustrations of critical habitat should be prepared. This final rule contains an illustration of the range of the Steller sea lion population (figure 1) and the aquatic foraging habitats (figures 2, 3 and 4) and provides tables listing the latitude and longitude of all haulouts and rookeries designated as critical habitat. There was insufficient time available prior to publication of this final rule in the *Federal Register* to prepare additional detailed illustrations. Further graphics will be prepared and will be disseminated with associated information in the near future.

*Comment 2:* One commenter was "especially pleased" with the proposal to designate critical habitat 20 nm seaward of rookeries and major haulouts west of 144° W. longitude, as well as the 3 large aquatic foraging habitats. However, this commenter questioned the definition of a major haulout and suggested NMFS revisit the criterion of 200 or more animals due to drastic reduction in the population and resultant low numbers of observations at some haulouts.

*Response:* The Steller sea lion Recovery Team recommended designating only major haulouts, which they defined as those used by 200 or more Steller sea lions at least once since 1970, as critical habitat. The Team acknowledged the difficulty selecting a finite number to designate critical habitat, but concluded that occupation

by 200 Steller sea lions reflected significant use of a site.

The decline in Steller sea lions was first detected in the eastern Aleutian Islands in the mid-1970's, and spread east and west from there by the late 1970's. The use of 1970 as the baseline year should preclude the omission of major haulouts due to the subsequent decline in the population.

*Comment 3:* ADoGC suggested a designation of a haulout on the outer coast of the Kachemak Bay State Wilderness Park as critical habitat.

*Response:* Information received from ADF&G indicated 70 to 100 male Steller sea lions use the outer coast of the Kachemak Bay State Wilderness Park as a haulout. This level of use does not meet the standard for a major haulout (at least 200 Steller sea lions observed on at least one occasion since 1970) for critical habitat designation.

*Comment 4:* One commenter opposed the designation of the terrestrial zones as critical habitat on the grounds that the designation would constitute a "taking" of private property rights through potential restrictions regarding land use.

*Response:* As stated in the proposed rule, the only direct impact of a critical habitat designation is through the provisions of section 7 of the ESA. That section applies only to those actions authorized, funded or carried out by Federal agencies. Federal activities that would affect areas designated as critical habitat are subject to the section 7 consultation process to determine if those activities are likely to destroy or adversely modify the critical habitat. Of course, in almost all cases those Federal activities would also affect listed species and would be subject to consultation under the jeopardy standard, regardless of whether critical habitat was or was not designated.

This final rule contains no special land use regulations. This critical habitat designation will not directly affect private or State land use activities unless there is some Federal nexus or involvement. Even where there is Federal involvement, NMFS anticipates that this final critical habitat designation, by itself, will not restrict private land use activities in a manner or to an extent that these activities are not already circumscribed as a result of the listing of this species, under the Marine Mammal Protection Act, or by other laws.

*Comment 5:* ADoGC and another commenter stated that NMFS is required to conduct an analysis pursuant to section 810 (16 U.S.C. 3120) of the Alaska National Interest Lands Conservation Act (ANILCA) concerning



the impacts to subsistence uses as a result of designating public lands as critical habitat. Because the State of Alaska asserts that designation of public lands as critical habitat is a form of withdrawal or reservation covered by section 810, NMFS should conduct the analysis required by section 810 before designating those areas as critical habitat.

*Response:* Section 810(a) of ANILCA provides that, in determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

It is unlikely that NMFS would be considered the Federal agency having primary jurisdiction over Federal public lands included in the critical habitat designation. Furthermore, this rule, by itself, does not restrict the use of public lands although NMFS may subsequently consult with other agencies to ensure compliance with the requirements of section 7. Consequently, NMFS has concluded that the requirements contained in section 810(a) are not applicable to the designation of critical habitat for Steller sea lions.

*Comment 6:* One commenter suggested Beehive and Matushka Islands be included as critical habitats if not already included under the Chiswell Islands listing. The commenter indicated staff at Kenai Fjords National Park observed 1100 to 1300 Steller sea lions hauled out at Beehive Island on January 16, 1985.

*Response:* Beehive and Matushka Islands are within the critical habitat identified at Chiswell Islands.

#### *Comments on Designation of Special Aquatic Foraging Habitats*

*Comment 7:* The ADoGC recognized the importance of Shelikof Strait, Bogoslof and Seguam foraging areas, but suggested that NMFS did not present adequate justification in the proposed rule or EA. ADF&G recommended designation of these three foraging areas based on the needs of sea lions and other ecological factors, rather than proximity to haulouts.

*Response:* NMFS has concluded that there is adequate justification for designation of the three special aquatic

foraging areas in Alaska for Steller sea lions based on biological and ecological needs of the species and the potential need for special management consideration. The ESA and associated regulations require designation of critical habitat that contain "features essential to the conservation of Steller sea lions and that may require special management considerations or protection" (50 CFR 424.12(b)). The sections of this preamble entitled, "Essential Habitat of the Steller sea lion" and "Need for Special Management Consideration" summarize the justification for the designation of these three special areas. Likewise much of the response to comment 1 is also applicable to this comment. Again, the potential need for special management considerations does not necessarily mean restrictions or elimination of activities. Close monitoring of activities and additional research also constitute "special management considerations".

*Comment 8:* One commenter, representing nine fishery organizations, identified existing protective measures resulting from the cooperation between the fishing industry, the North Pacific Fishery Management Council (the Council) and NMFS, despite limited available data. This commenter suggested that the benefits of designating the large aquatic areas are not clear unless they are related to anticipated future regulatory measures. The commenter indicated future measures are not necessary due to: (1) Existing regulations, (2) NMFS presentations to the Council that the population reduction is due to loss of pups, which are not impacted by commercial fisheries, (3) questions regarding linkages between commercial fisheries and the health of Steller sea lion population, and identification of other factors that may have contributed to the decline, (4) lack of incidental take in groundfish trawl fisheries, and (5) need for completion of NMFS studies of feeding ecology, energetics and effects of fishing on sea lion prey prior to implementation of these regulations. Ten other commenters supported these observations, and wanted NMFS to clarify its intent regarding anticipated future regulations resulting from designation.

*Response:* NMFS appreciates the cooperation of the Council and the fishing industry in the development of and adherence to regulations modifying fishing activities to reduce impacts of the groundfish trawl fisheries on the Steller sea lion population. Existing regulations include 3 nm buffer zones, 10 nm trawl prohibition areas around rookeries, and 20 nm seasonal

expansion of some of the trawl prohibition areas.

The Steller sea lion recovery team first recommended the designation of aquatic critical habitats in 1991, noting that "since nutritional factors appear to be involved in the population decline the Team felt that it would not be satisfactory to wait for additional information before recommending designation of some areas that are critical habitat for feeding" (Lowry April 1, 1991). NMFS agrees with this observation, and believes that designation of these foraging areas will assist the Council and fishing industry in identifying areas where modifications in fishing effort may be necessary to protect Steller sea lions.

No additional regulatory actions are anticipated for fisheries conducted under the BSAI and GOA groundfish management plans as a result of critical habitat designation. Alaskan groundfish fisheries are considered under ESA section 7 consultations at least once a year when the total allowable catch specifications are determined. Past consultations have resulted in changes in the manner in which these fisheries are prosecuted and, as a result of these modifications, NMFS has determined that Alaskan groundfish fisheries are not likely to jeopardize the continued existence of Steller sea lions or essential habitat. New information regarding Steller sea lions or their prey, or changes in fishing practices that may affect Steller sea lions, could result in a modification of regulations regardless of critical habitat designation.

NMFS will continue to collect and analyze data regarding Steller sea lion feeding ecology and energetic needs. NMFS believes existing information, discussed in the preamble to this final rule, is adequate to allow the designation of critical habitat including aquatic zones and the three special aquatic foraging areas.

*Comment 9:* One commenter suggested the Shelikof Strait foraging area be extended northward along the Cape Douglas coast to include Shaw Island, which lies in waters the commenter has observed as important for foraging Steller sea lions.

*Response:* NMFS believes the most important foraging areas near Shelikof Strait are within the boundaries identified as critical habitat, although clearly sea lions may forage outside this area. Critical habitat boundaries can be modified in the future if NMFS receives additional information or observes other areas that are critical to Steller sea lions.

*Comment 10:* Three commenters questioned the proposed designation of the entire Shelikof Strait as critical



habitat for Steller sea lions. They suggested actions already taken through ESA section 7 consultations and associated management actions taken under the Magnuson Act precluded the need to designate Shelikof Strait as critical habitat. One of the commenters indicated data in the recovery plan and proposed rule did not support the designation of the entire Shelikof Strait as critical habitat, and suggested data on satellite-tagged Steller sea lions indicated Steller sea lions forage offshore in winter and are therefore not found in Shelikof Strait during winter months. During the breeding season, they suggest Steller sea lions are found only marginally at the northeast and southeast portions of Shelikof Strait near rookeries.

*Response:* Shelikof Strait was proposed as critical habitat because it contains "features essential to the conservation of Steller sea lions and that may require special management considerations or protection" (50 CFR 424.12(b)). These features include large spawning concentrations of walleye pollock. Survival of pollock larvae and juveniles in the Gulf of Alaska is thought by some to be dependent upon the southwestward transport of larvae from spawning grounds in Shelikof Strait to suitable nursery grounds along the Alaska Peninsula (Lloyd and Davis 1989). Additionally, Shelikof Strait contains or is adjacent to a number of haulouts and is proximal to major rookeries.

During intensive harvest of pollock between 1982 and 1984, a total of 901 Steller sea lions were observed killed in Shelikof Strait and a total of 2115 were estimated to have been killed. Stomach contents from 36 animals taken in 1983 and 1984 indicated the sea lions were feeding on pollock similar in size to that being harvested in the fishery (Loughlin and Nelson 1986). These observations confirmed ADF&G aerial survey results which identified Shelikof Strait as an important foraging area for Steller sea lions in the Central Gulf in the late winter, especially in years when pollock are abundant in those waters.

The need to continue to monitor and manage activities which impact fishery resources in Shelikof Strait through the section 7 consultation process illustrates the appropriateness of designation of this area as critical habitat. Seasonal use of the area will be considered during the ESA section 7 process in a case by case basis, rather than through seasonal designation. Impacts to habitat during seasons of low occurrence of sea lions which may affect Steller sea lions returning to the area, such as physical destruction of haulouts, could be

averted as a result of identification of the critical habitat.

#### General Comments

*Comment 11:* ADoGC suggested critical habitat designation may affect lease sales in the Shelikof Strait area proposed by Alaska's Division of Oil and Gas by increasing the scrutiny and mitigation measures resulting from that designation. ADoGC indicated these possible impacts are not adequately addressed in the proposed rule.

*Response:* NMFS does not anticipate any special or increased restrictions regarding lease sales in the Shelikof Strait area to result from this critical habitat designation separate or apart from restrictions which would have occurred as a result of listing Steller sea lions in 1990 as a threatened species.

Currently, Federal agencies permitting, funding or carrying out activities that may affect Steller sea lions are required to consult with NMFS regarding these activities. Even without this critical habitat designation, Federal agencies are required to consult with NMFS in most, if not all, situations which may affect Steller sea lion habitat, since actions affecting the habitat would also be expected to affect the species. Likewise, the protection provided by a critical habitat designation, therefore, usually only duplicates the protection provided under the ESA section 7 jeopardy provision.

Initiation of consultation, pursuant to section 7 of the ESA, is the responsibility of the action agency since NMFS cannot know when actions that may affect Steller sea lions are planned. Appropriate scrutiny resulting from heightened awareness of Steller sea lion's needs due to the designation of critical habitat would be a benefit to the species. Agencies are provided with a clearer indication as to when consultation under section 7 will be required. This is most important in cases where the action would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present).

*Comment 12:* One commenter indicated NMFS did not offer evidence that activities other than commercial fishing affect the Steller sea lion population, and therefore the existing biological opinion regarding activities such as Outer Continental Shelf (OCS) lease sales should not be modified.

*Response:* NMFS has identified features, including established rookeries and haulouts and prey availability, that are essential to the conservation of

Steller sea lions. Section 7 of the ESA requires Federal action agencies to ensure that their activities are not likely to jeopardize Steller sea lions or result in destruction or adverse modifications of their critical habitat. Consultation must be reinitiated any time significant new information becomes available regarding the biology of the species or the effects of the Federal action, or when critical habitat is designated. NMFS does not anticipate that reinitiated consultation will result in changes to the opinion based on the designation unless there is new information available not previously considered in the opinion.

*Comment 13:* One commenter indicated NMFS should take meaningful action, in addition to critical habitat designation, to prevent impacts from OCS oil and gas activities. Suggested actions included excluding OCS oil and gas leasing, exploration, development and transportation activities within Shelikof Strait, lower Cook Inlet and the St. George Basin and canceling other Alaska OCS and state offshore oil and gas lease sales to allow time for a review of threats posed to the Steller sea lion population and the marine ecosystem. This commenter indicated transport of oil from other sale areas presented an increased risk to the Steller sea lion and its habitat.

*Response:* NMFS believes that specific management measures, such as proposed by this commenter, are better considered during the consultation process rather than in this designation of critical habitat. During the consultation process, NMFS will evaluate whether or not specific activities are likely to destroy or adversely modify critical habitat. Further, NMFS will continue to work with other Federal agencies, such as MMS (the Federal agency responsible for OCS lease sales), toward completion of Recovery Plan goals.

*Comment 14:* One commenter representing nine fishing organizations and supported by 9 additional commenters took exception to claims that overfishing, incidental take in fishing gear, shooting and other fishing activities were causes of the Steller sea lion population decline.

*Response:* The Alaskan groundfish fisheries have developed in the geographic area that has historically supported the bulk of the Steller sea lion population, and this area has experienced substantial declines in the number of Steller sea lions counted on breeding sites over the last 30 years. Although the relationship between the Steller sea lion population and the harvest of billions of pounds of



groundfish is unclear, Steller sea lions may compete with commercial fisheries for food resources, and are occasionally taken incidental to commercial fishing operations. Trawl fisheries are suspected to be especially competitive for Steller sea lion prey resources due to both the species targeted and the ability of trawls to catch concentrated patches of fish. Mid-water trawl fisheries, such as the pollock fishery, may particularly affect juvenile sea lions due to their ability to capture fish within the water column at depths accessible to juveniles. Regardless of the causes of the decline of this threatened species, however, modifications of fishing practices have been identified as one of the few mechanisms available that would be likely to reduce human impacts on Steller sea lions and promote the recovery of the species.

**Comment 15:** Two commenters recommended NMFS take additional actions to manage commercial fishing operations in critical habitat and elsewhere, either as part of critical habitat designation or as a separate action accompanying critical habitat designation. One of these commenters suggested: (1) Taking precautions when determining the amount of fish to be harvested, (2) providing temporal and spatial limits in areas where competition between fisheries and sea lions may occur, and (3) developing an ecosystem approach to reflect biological interaction.

**Response:** NMFS is currently managing fisheries in a manner consistent with the recommendations listed by this commenter. Amounts of groundfish total allowable catches (TACs) available for harvest each fishing year are based on stock assessments prepared annually for each species or species group. The assessments are prepared and peer-reviewed annually, and provide the basis for recommendations of TAC provided by the Council to the Secretary of Commerce (Secretary) for implementation. Stock assessments use the best historical and current information available. These assessments incorporate a host of biological parameters related to the size and health of each exploited population and its relationship to other parts of the marine ecosystem, such as: total fishing mortality, predator-prey relationships and expected predation mortality, and groundfish biomass distribution. Proposed TACs are further reviewed for impacts to threatened and endangered species through annual section 7 consultations. Existing year-round and seasonal restrictions on trawl fishing operations in certain areas were

developed as a result of this consultation process. In addition to annual consultations, consultations are reinitiated whenever NMFS receives new information regarding Steller sea lions or fishery activities which may change the basis of previous determinations regarding impacts to Steller sea lions.

**Comment 16:** ADOGC and 3 other commenters indicated additional information regarding the potential impacts of critical habitat designation on non-Federal activities was needed. Commenters questioned the justification for subjecting commercial and recreational users of these areas to heightened inquiry associated with critical habitat designation.

**Response:** Heightened public awareness due to critical habitat designation may indirectly result in reduced impact to Steller sea lions and critical habitat. The direct economic and other impacts on non-federal activities resulting from this critical habitat designation are expected to be minimal.

**Comment 17:** One commenter representing nine fishing organizations suggested NMFS designate critical habitat that reflects the seasonal nature of Steller sea lion habitat use.

**Response:** Some activities that occur within the designated critical habitat areas when Steller sea lions are not present could have a permanent or long-term impact on the habitat or essential features and, thus, would affect Steller sea lions returning to the area. As a result of this possibility, NMFS believes it would not be practical or beneficial for the conservation of the species to establish seasonal critical habitat designation. Federal actions that take place in critical habitat will be evaluated individually through the section 7 consultation process, and impacts to Steller sea lions seasonally occupying an area will be considered on a case-by-case basis.

**Comment 18:** One commenter requested Steller sea lion critical habitat designation not be used to alter the vessel transit area that have been established through buffer zones at Akutan, Clubbing Rock and Outer Island Steller sea lion rookeries. Two commenters expressed concern that designation of critical habitat may unnecessarily restrict traditional or emergency activities in the vicinity of the designated sites without the opportunity for public review or comment.

**Response:** Designation of Steller sea lion critical habitat will not change existing regulations or exemptions. As noted in the proposed rule, the designation of critical habitat does not,

in itself, restrict human activities within the area or mandate any specific management or recovery action. The final rule does not contain further protective regulations or restrictions, beyond the designation of critical habitat. If, at some future time, it is determined that further restrictions are necessary to protect Steller sea lions or critical habitat, NMFS will initiate the rulemaking process which provides opportunity for public review and comment.

**Comment 19:** One commenter believed that protective measures taken by the State of Oregon to limit disturbance of Steller sea lion rookeries have been successful, and that industry cooperation and public education efforts there have been effective in protecting the rookeries.

**Response:** NMFS agrees that the steps taken by the State of Oregon and constituent groups have been positive. NMFS believes that the designation of Steller sea lion rookeries off the southern coast of Oregon will provide further guidance for Federal agencies in evaluating the potential effects of any future Federal actions which may be considered in the areas adjacent to the Steller sea lion rookeries in Oregon.

**Comment 20:** One commenter recommended further research to evaluate the effects of disturbance on Steller sea lions in order to provide additional information for use by resource agencies and the public in resolving potential resource use conflicts.

**Response:** Research is currently being conducted concerning the effects of disturbance on Steller sea lions under the guidance of the Steller Sea Lion Recovery Plan.

#### Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impacts specifically result from the designation of critical habitat, above the impacts attributable to listing the species or from other



authorities, are expected to be minimal. The General Counsel of the Department of Commerce certified when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act; therefore, a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. NOAA Administrative Order 216-6 states that critical habitat designations under the ESA, generally are categorically excluded from the requirements to prepare on EA or Environmental Impact Statement. However, in order to more clearly evaluate the minimal environmental and economic impacts of critical habitat designation versus the alternative of a no-critical habitat designation, NMFS has prepared an EA. Copies of the EA are available on request (see ADDRESSES).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the designation of critical habitat for Steller sea lions is consistent with the maximum extent practicable with the approved Coastal Zone Management Programs of the states of Alaska, Washington, Oregon, and California. The responsible state agencies concurred with this determination, as required by section 7 of the Coastal Zone Management Act.

**List of Subjects in 50 CFR Part 226**

Endangered and threatened wildlife.

Dated: August 23, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

**PART 226—DESIGNATED CRITICAL HABITAT**

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.12 is added to subpart B to read as follows:

**§ 226.12 North Pacific Ocean.**

**Steller Sea Lion (*Eumetopias jubatus*)**

(a) *Alaska rookeries, haulouts, and associated areas.* In Alaska, all major Steller sea lion rookeries identified in Table 1 and major haulouts identified in Table 2 and associated terrestrial, air, and aquatic zones. Critical habitat includes a terrestrial zone that extends 3,000 feet (0.9 km) landward from the baseline or base point of each major rookery and major haulout in Alaska. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above the terrestrial zone of each major rookery and major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is east of 144° W. longitude. Critical habitat includes an aquatic zone that extends 20 nm (37 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is west of 144° W. longitude.

(b) *California and Oregon rookeries and associated areas.* In California and Oregon, all major Steller sea lion rookeries identified in Table 1 and associated air and aquatic zones. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above areas historically occupied by sea lions at each major rookery in California and Oregon, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery in California and Oregon.

(c) *Three special aquatic foraging areas in Alaska.* Three special aquatic foraging areas in Alaska, including the Shelikof Strait area, the Bogoslof area, and the Seguam Pass area.

(1) Critical habitat includes the Shelikof Strait area in the Gulf of Alaska which is identified in Figure 2 and

consists of the area between the Alaska Peninsula and Tugidak, Sitkinak, Aiaktilik, Kodiak, Raspberry, Afognak and Shuyak Islands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56°38'N/157°27'W) and the southwestern tip of Tugidak Island (56°24'N/154°41'W) and bounded in the east by a line connecting Cape Douglas (58°51'N/153°15'W) and the northernmost tip of Shuyak Island (58°37'N/152°22'W).

(2) Critical habitat includes the Bogoslof area in the Bering Sea shelf which is identified in Figure 3 and consists of the area between 170°00'W and 164°00'W, south of straight lines connecting 55°00'N/170°00'W and 55°00'N/168°00'W; 55°30'N/168°00'W and 55°30'N/166°00'W; 56°00'N/166°00'W and 56°00'N/164°00'W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:

- 52°49.2'N/169°40.4'W
- 52°49.8'N/169°06.3'W
- 53°23.8'N/167°50.1'W
- 53°18.7'N/167°51.4'W
- 53°59.0'N/166°17.2'W
- 54°02.9'N/166°03.0'W
- 54°07.7'N/165°40.6'W
- 54°08.9'N/165°38.8'W
- 54°11.9'N/165°23.3'W
- 54°23.9'N/164°44.0'W

(3) Critical habitat includes the Seguam Pass area which is identified in Figure 4 and consists of the area between 52°00'N and 53°00'N and between 173°30'W and 172°30'W.

3. Tables 1 and 2 and Figures 1 through 4 are added to part 226 to read as follows:

**Table 1 to Part 226 [Added]**

Major Steller sea lion rookery sites are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Alaska:				
Western Aleutians:				
Agattu I.:				
Cape Sabak <sup>1</sup> .....	52 23.5N .....	173 43.5E .....	52 22.0N .....	173 41.0E
Gillon Point <sup>1</sup> .....	52 24.0N .....	173 21.5E .....		
Attu I. <sup>1</sup> .....	52 54.5N .....	172 28.5E .....	52 57.5N .....	172 31.5E



State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Buldir I. <sup>1</sup>	52 20.5N	175 57.0E	52 23.5N	172 51.0E
Central Aleutians:				
Adak I. <sup>1</sup>	51 36.5N	176 59.0W	51 38.0N	176 59.5W
Agligadak I. <sup>1</sup>	52 06.5N	172 54.0W		
Amchitka I. <sup>1</sup>				
Column Rock <sup>1</sup>	51 32.5N	178 49.5E		
East Cape <sup>1</sup>	51 22.5N	179 28.0E	51 21.5N	179 25.0E
Ayugadak I. <sup>1</sup>	51 45.5N	178 24.5E		
Gramp Rock <sup>1</sup>	51 29.0N	178 20.5W		
Kasatochi I. <sup>1</sup>	52 10.0N	175 31.5W	52 10.5N	175 29.0W
Kiska I.:				
Lief Cove <sup>1</sup>	51 57.5N	177 21.0E	51 56.5N	177 20.0E
Cape St. Stephen <sup>1</sup>	51 52.5N	177 13.0E	51 53.5N	177 12.0E
Seguam I./Saddleridge <sup>1</sup>	52 21.0N	172 35.0W	52 21.0N	172 33.0W
Semisopochnoi I.:				
Pochnoi Pt <sup>1</sup>	51 58.5N	179 45.5E	51 57.0N	179 46.0E
Petrel Pt <sup>1</sup>	52 01.5N	179 37.5E	52 01.5E	179 39.0E
Tag I. <sup>1</sup>	51 33.5N	178 34.5W		
Ulak I. <sup>1</sup>	51 20.0N	178 57.0W	51 18.5N	178 59.5W
Yunaska I. <sup>1</sup>	52 42.0N	170 38.5W	52 41.0N	170 34.5W
Eastern Aleutian:				
Adugak I. <sup>1</sup>	52 55.0N	169 10.5W		
Akun I./Billings Head <sup>1</sup>	54 18.0N	165 32.5W	54 18.0N	165 31.5W
Akutan I./Cape Morgan <sup>1</sup>	54 03.5N	166 00.0W	54 05.5N	166 05.0W
Bogoslof I. <sup>1,2</sup>	53 56.0N	168 02.0W		
Ogchul I. <sup>1</sup>	53 00.0N	168 24.0W		
Sea Lion Rocks. (Amak) <sup>1</sup>	55 28.0N	163 12.0W		
Ugamak I. <sup>1</sup>	54 14.0N	164 48.0W	54 13.0N	164 48.0W
Bering Sea:				
Walrus I. <sup>1</sup>	57 11.0N	169 56.0W		
Western Gulf of Alaska:				
Atkins I. <sup>1</sup>	55 03.5N	159 18.5W		
Chemabura I. <sup>1</sup>	54 47.5N	159 31.0W	54 45.5N	159 33.5W
Clubbing Rocks (N) <sup>1</sup>	54 43.0N	162 26.5W		
Clubbing Rocks (S) <sup>1</sup>	54 42.0N	162 26.5W		
Pinnacle Rock <sup>1</sup>	54 46.0N	161 46.0W		
Central Gulf of Alaska:				
Chirikof I. <sup>1</sup>	55 46.5N	155 39.5W	55 46.5N	155 43.0W
Chowiet I. <sup>1</sup>	56 00.5N	156 41.5W	56 00.5N	156 42.0W
Marmot I. <sup>1</sup>	58 14.5N	151 47.5W	58 10.0N	151 51.0W
Outer I. <sup>1</sup>	59 20.5N	150 23.0W	59 21.0N	150 24.5W
Sugarloaf I. <sup>1</sup>	58 53.0N	152 02.0W		
Eastern Gulf of Alaska:				
Seal Rocks <sup>1</sup>	60 10.0N	146 50.0W		
Fish I. <sup>1</sup>	59 53.0N	147 20.5W		
Southeast Alaska:				
Forrester I.	54 51.0N	133 32.0W	54 52.5N	133 35.5W
Hazy I.	55 52.0N	134 34.0W	55 51.5N	134 35.0W
White Sisters	57 38.0N	136 15.5W		
Oregon:				
Rogue Reef: Pyramid Rock	42 26.4N	124 28.1W		
Orford Reef:				
Long Brown Rock	42 47.3N	124 36.2W		
Seal Rock	42 47.1N	124 35.4W		
California:				
Ano Nuevo I.	37 06.3N	122 20.3W		
Southeast Farallon I.	37 41.3N	123 00.1W		
Sugarloaf I. & Cape Mendocino	40 26.0N	124 24.0W		

<sup>1</sup> Includes an associated 20 NM aquatic zone.

<sup>2</sup> Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.

#### Table 2 to part 226 [Added]

Major Steller sea lion haulout sites in Alaska are identified in the following table. Where two sets of coordinates are

given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to

the second set of coordinates. Where only one set of coordinates is listed, that location is the basepoint<sup>1</sup>



State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
<b>Alaska:</b>				
<b>Western Aleutians:</b>				
Alaid I. 1	52 45.0N	173 56.5E	52 46.5N	173 51.5E
Attu/Chirikof Pt. 1	52 30.0N	173 26.7E		
Shemya I. 1	52 44.0N	174 09.0E		
<b>Central Aleutians:</b>				
Amatignak I. 1	51 13.0N	179 08.0E		
<b>Amlia I.:</b>				
East 1	52 05.0N	172 58.5W	52 06.0N	172 57.0W
Sviech. Harbor 1	52 02.0N	173 23.0W		
Amukta I. & Rocks 1	52 31.5N	171 16.5W	52 26.5N	171 16.5W
Anagaksik I. 1	51 51.0N	175 53.5W		
Atka I. 1	52 23.5N	174 17.0W	52 24.5N	174 07.5W
Bobrof I. 1	51 54.0N	177 27.0W		
Chagulak I. 1	52 34.0N	171 10.5W		
Chuginadak I. 1	52 46.5N	169 44.5W	52 46.5N	169 42.0W
Great Sitkin I. 1	52 06.0N	176 10.5W	52 07.0N	176 08.5W
Kagamil I. 1	53 02.5N	169 41.0W		
<b>Kanaga I.:</b>				
North Cape 1	51 56.5N	177 09.0W		
Ship Rock 1	51 47.0N	177 22.5W		
Kavalga I. 1	51 34.5N	178 51.5W	51 34.5N	178 49.5W
Kiska I./Sirius Pt. 1	52 08.5N	177 36.5E		
Kiska I./Sobaka & Vega 1	51 50.0N	177 20.0E	51 48.5N	177 20.5E
Little Sitkin I. 1	51 59.5N	178 30.0E		
Little Tanaga I. 1	51 50.5N	176 13.0W	51 49.0N	176 13.0W
Sagigik I. 1	52 00.5N	173 08.0W		
<b>Seguam I.:</b>				
South 1	52 10.0N	172 37.0W	52 19.5N	172 18.0W
Finch Pt. 1	52 23.5N	172 25.5W	52 23.5N	172 24.0W
Segula I. 1	52 00.0N	178 06.5E	52 03.5N	178 09.0E
Tanaga I. 1	51 55.0N	177 58.5W	51 55.0N	177 57.0W
Tanadak I. (Amlia) 1	52 04.5N	172 57.0W		
Tanadak I. (Kiska) 1	51 57.0N	177 47.0E		
Ugldak I. 1	51 35.0N	178 30.5W		
Ullaga I. 1	53 04.0N	169 47.0W	53 05.0N	169 46.0W
Unaiga & Dinkum Rocks 1	51 34.0N	179 04.0W	51 34.5N	179 03.0W
<b>Eastern Aleutians:</b>				
Akutan I./Reef-Lava 1	54 10.5N	166 04.5W	54 07.5N	166 06.5W
Amak I. 1	55 24.0N	163 07.0W	55 26.0N	163 10.0W
Cape Sedanka & Island 1	53 50.5N	166 05.0W		
Emerald I. 1	53 17.5N	167 51.5W		
Old Man Rocks 1	53 52.0N	166 05.0W		
Pollivnoi Rock 1	53 16.0N	167 58.0W		
Tanginak I. 1	54 13.0N	165 19.5W		
Tigalda I. 1	54 08.5N	164 58.5W		
Umnak I./Cape Aslik 1	53 25.0N	168 24.5W		
<b>Bering Sea:</b>				
Cape Newenham 1	58 39.0N	162 10.5W		
Hall I. 1	60 37.0N	173 00.0W		
Round I. 1	58 36.0N	159 58.0W		
<b>St. Paul I.:</b>				
Northeast Point 1	57 15.0N	170 06.5W		
Sea Lion Rock 1	57 06.0N	170 17.5W		
<b>St. George I.:</b>				
S Rookery 1	56 33.5N	169 40.0W		
Dalnoi Point 1	56 36.0N	169 46.0W		
<b>St. Lawrence I.:</b>				
S Pujuk I. 1	64 04.0N	168 51.0W		
SW Cape 1	63 18.0N	171 26.0W		
<b>Western Gulf of Alaska:</b>				
Bird I. 1	54 49.0N	159 46.0W		
Castle Rock 1	55 17.0N	159 30.0W		
Caton I. 1	54 23.5N	162 25.5W		
Jude I. 1	55 16.0N	161 06.0W		
Lighthouse Rocks 1	55 47.5N	157 24.0W		
Nagai I. 1	54 52.5N	160 14.0W	54 56.0N	160 15.0W
Nagai Rocks 1	55 50.0N	155 46.0W		
Sea Lion Rocks (Unga) 1	55 04.5N	160 31.0W		
South Rock 1	54 18.0N	162 43.5W		
Spritz I. 1	55 47.0N	158 54.0W		
The Whaleback 1	55 16.5N	160 06.0W		



State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
<b>Central Gulf of Alaska:</b>				
Cape Barnabas <sup>1</sup>	57 10.0N	152 55.0W	57 07.5N	152 55.0W
Cape Chiniak <sup>1</sup>	57 35.0N	152 09.0W	57 37.5N	152 09.0W
Cape Gull <sup>1,2</sup>	58 13.5N	154 09.5W	58 12.5N	154 10.5W
Cape Ikolik <sup>1,2</sup>	57 17.0N	154 47.5W		
Cape Kuliak <sup>1,2</sup>	58 08.0N	154 12.5W		
Cape Sitkinak <sup>1</sup>	56 32.0N	153 52.0W		
Cape Ugat <sup>1,2</sup>	57 52.0N	153 51.0W		
Gore Point <sup>1</sup>	59 12.0N	150 58.0W		
Gull Point <sup>1</sup>	57 21.5N	152 36.5W	57 24.5N	152 39.0W
Latax Rocks <sup>1</sup>	58 42.0N	152 28.5W	58 40.5N	152 30.0W
Long I. <sup>1</sup>	57 45.5N	152 16.0W		
Nagahut Rocks <sup>1</sup>	59 06.0N	151 46.0W		
Puale Bay <sup>1,2</sup>	57 41.0N	155 23.0W		
Sea Lion Rocks (Marmot) <sup>1</sup>	58 21.0N	151 48.5W		
Sea Otter I. <sup>1</sup>	58 31.5N	152 13.0W		
Shakun Rock <sup>1,2</sup>	58 33.0N	153 41.5W		
Sud I. <sup>1</sup>	58 54.0N	152 12.5W		
Sutwik I. <sup>1</sup>	56 32.0N	157 14.0W	56 32.0N	157 20.0W
Takli I. <sup>1,2</sup>	58 03.0N	154 27.5W	58 03.0N	154 30.0W
Two-headed I. <sup>1</sup>	56 54.5N	153 33.0W	56 53.5N	153 35.5W
Ugak I. <sup>1</sup>	57 23.0N	152 15.5W	57 22.0N	152 19.0W
Ushagat I. <sup>1</sup>	58 54.5N	152 18.5W		
<b>Eastern Gulf of Alaska:</b>				
Cape Fairweather	58 47.5N	137 54.0W		
Cape St. Elias <sup>1</sup>	59 48.0N	144 36.0W		
Chiswell Islands <sup>1</sup>	59 36.0N	149 34.0W		
Graves Rock	58 13.0N	136 39.0W		
Hook Point <sup>1</sup>	60 20.0N	146 15.5W		
Middleton I. <sup>1</sup>	59 26.5N	146 20.0W		
Perry I. <sup>1</sup>	60 39.5N	147 56.0W		
Point Eleanor <sup>1</sup>	60 35.0N	147 34.0W		
Point Elrington <sup>1</sup>	59 56.0N	148 13.5W		
Seal Rocks <sup>1</sup>	60 10.0N	146 50.0W		
The Needle <sup>1</sup>	60 07.0N	147 37.0W		
<b>Southeast Alaska:</b>				
Benjamin I.	58 33.5N	134 54.5W		
Biall Rock	56 43.0N	135 20.5W		
Biorka I.	56 51.0N	135 32.0W		
Cape Addington	55 26.5N	133 48.5W		
Cape Cross	57 55.5N	136 33.0W		
Cape Ommaney	56 09.5N	134 39.5W		
Coronation I.	55 49.5N	134 16.5W		
Ledge Point	58 48.5N	130 45.5W		
Lull Point	57.18.0N	134 48.5W		
Sunset I.	57 30.5N	133 35.0W		
Timbered I.	55 42.0N	133 48.0W		

<sup>1</sup> Includes an associated 20 NM aquatic zone.

<sup>2</sup> Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.

Figures to Part 226



Figure 1: Map of the North Pacific Ocean showing the general range of Steller sea lions (stippled area) and the location of major rookeries (arrows).

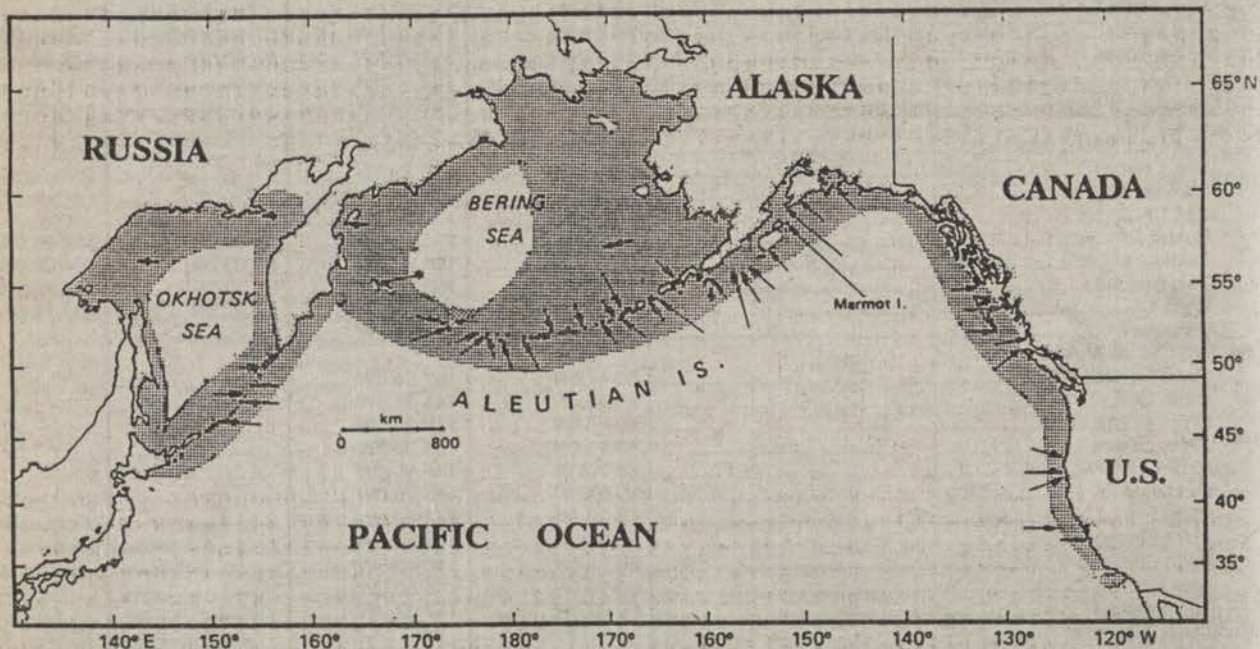




Figure 2: Steller sea lion critical habitat in Shelikof Strait. Locations indicated are major Steller sea lion rookeries.

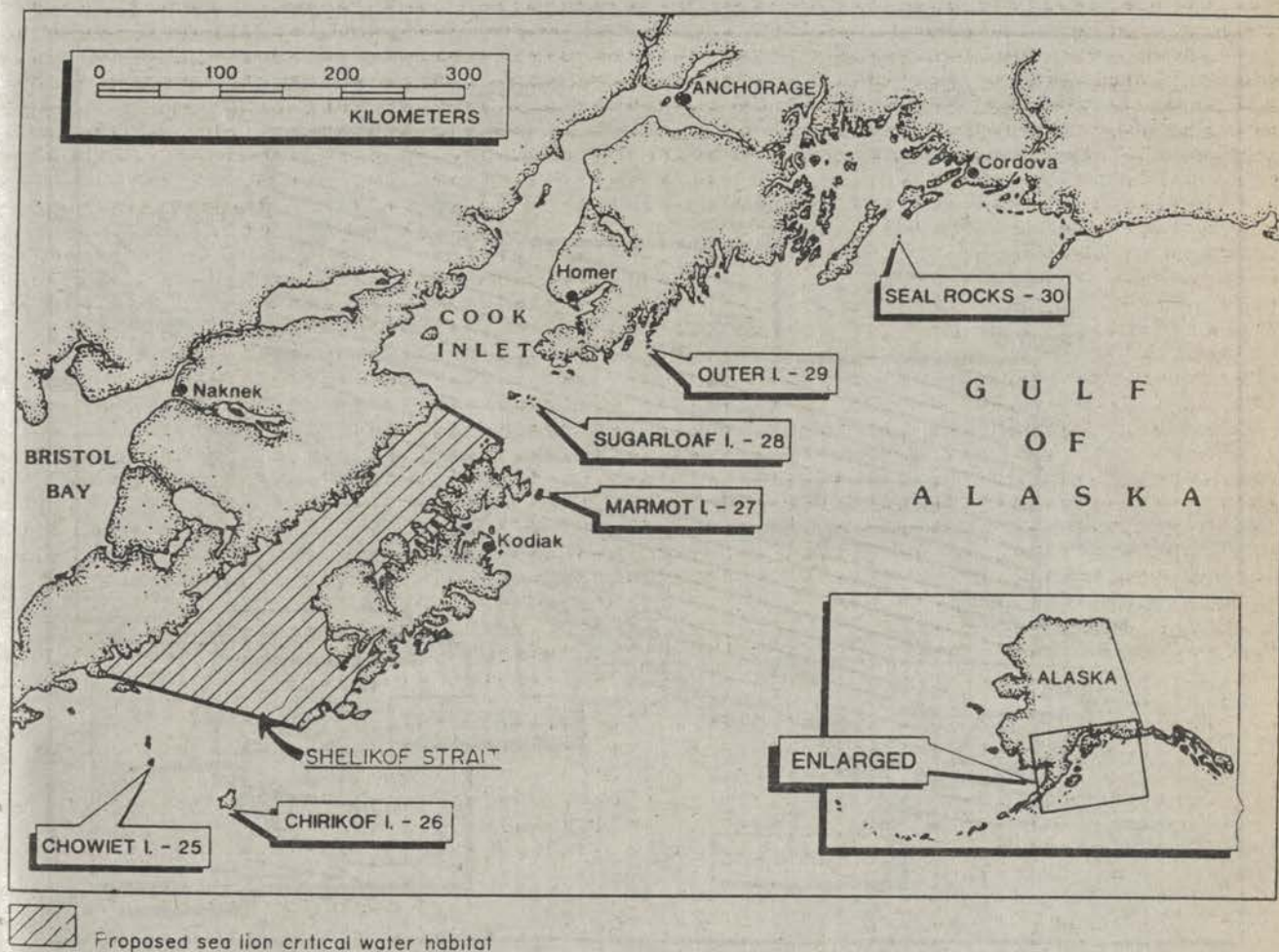
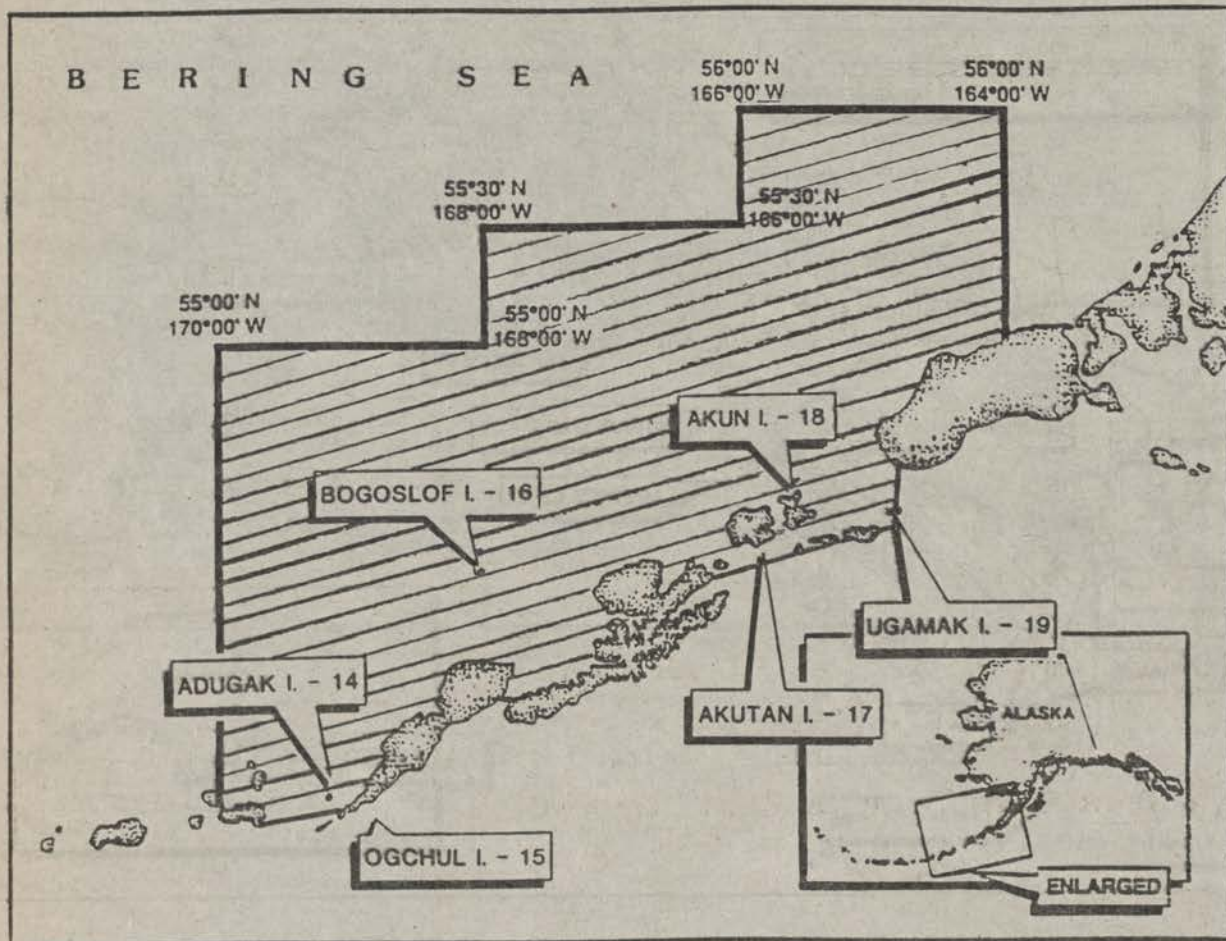




Figure 3: Steller sea lion critical habitat in the vicinity of Bogoslof Island. Locations indicated are major Steller sea lion rookeries.




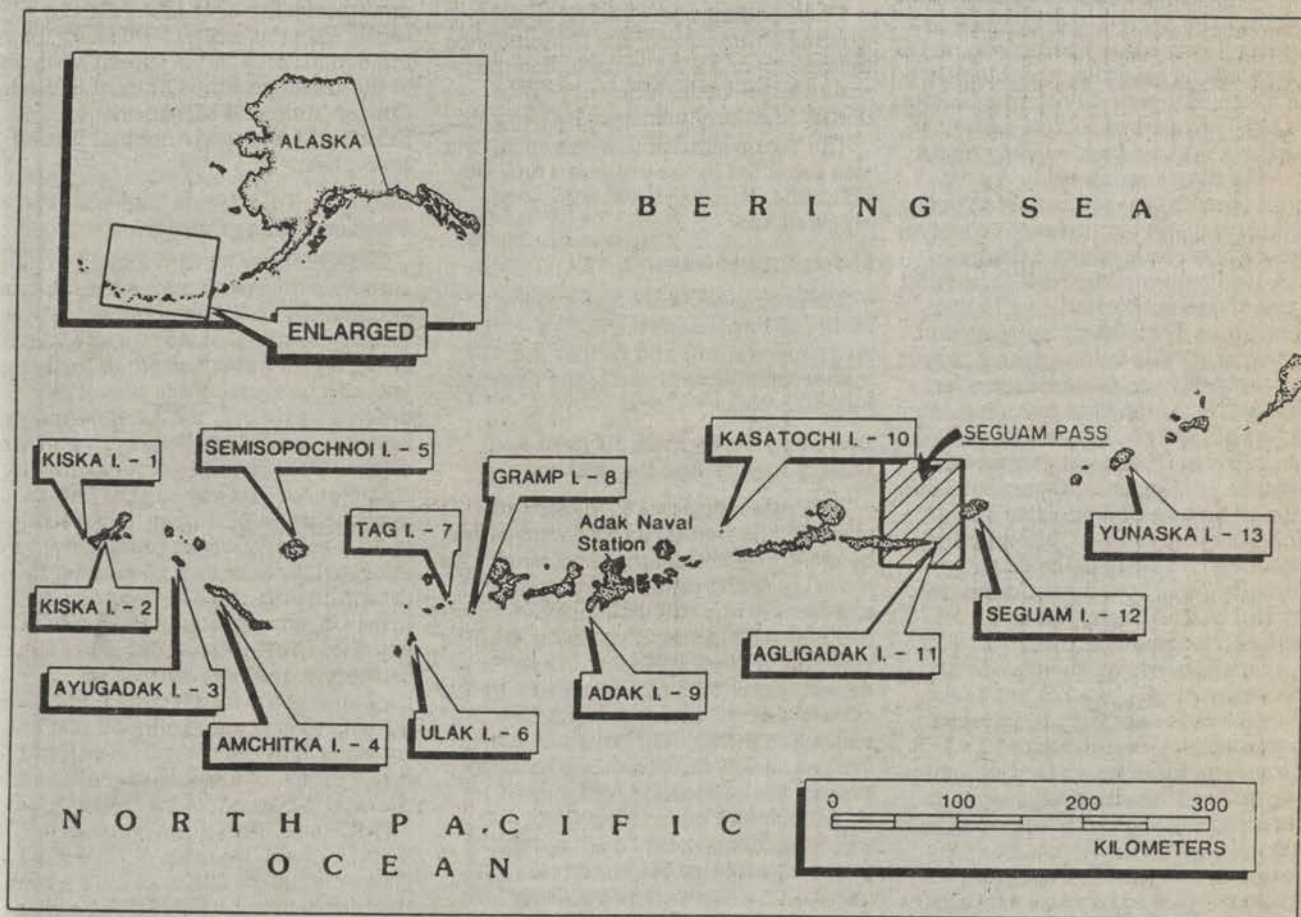

 Proposed sea lion critical water habitat.



Figure 4: Steller sea lion critical habitat in vicinity of Sequam Pass. Locations indicated are major Steller sea lion rookeries.



 Proposed sea lion critical water habitat.

[FR Doc. 93-20821 Filed 8-26-93; 8:45 am]

BILLING CODE 3510-22-C



**50 CFR Part 285**

[Docket No. 930488-3088; I.D. 032293A]

RIN 0648-AE83

**Atlantic Tuna Fisheries**

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

ACTION: Final rule.

**SUMMARY:** The Secretary of Commerce (Secretary) issues this final rule to revise the regulations governing the Atlantic tuna fisheries to require Atlantic bluefin tuna (ABT) dealers to submit daily reports via FAX and a bi-weekly report instead of the present weekly report; require permits for vessels fishing in the Angling category; require at-sea observer coverage on vessels taking Atlantic tunas, if so requested by NMFS; prohibit the use of non-authorized gear in the Atlantic tuna fisheries except pursuant to an experimental fishing exemption; allow the Assistant Administrator for Fisheries, NOAA (AA) to make inseason transfers of potentially underharvested quota between fishing categories; raise the amount of General category set-aside for the late season fishery from 40 metric tons (mt) to 65 mt; allow for inseason adjustments to the Angling category bag and boat limits for private, party and charter boats; and make technical changes to enhance administration, management and enforcement.

This action is necessary to improve management and monitoring of the U.S. Atlantic tuna fisheries, to conform more closely to the 1991 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, and to enhance collection of data to improve assessment of the environmental, economic, and social impacts of the fisheries and of fishery policy.

**EFFECTIVE DATE:** August 26, 1993.

**ADDRESSES:** Copies of the Final Background Document/Environmental Assessment/Regulatory Impact Review, are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The

ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to the AA for Fisheries, NOAA (AA).

**Purpose of Current Action**

These actions are intended to meet existing obligations of the United States to implement ICCAT recommendations and to improve the efficiency of the domestic fishery management program.

The background of this current action was provided in the proposed rule (58 FR 32894, June 14, 1993) and is not repeated here.

**Management Measures**

These changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries.

**Daily Reports by FAX, Revised Bi-weekly Report, and Permit Fee**

This rule requires ABT dealers to submit daily reports by FAX, as well as by mail. In addition, the requirement for a weekly dealer report is replaced with a bi-weekly report to enhance the usefulness of information collected. The rule authorizes the Regional Director to collect fees to recover the administrative costs of issuing dealer permits. The amount of the fee will be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. As an interim measure, no fees will be collected for dealer permit applications processed in 1993.

**Angling Category Permits**

Angling category vessel permits will be issued first to party and charter vessels in 1993 and to private vessels in 1994. The permit authorizes vessels to fish for or take school, large school, and small medium size class bluefin tuna within established daily trip, bag, and vessel limits. Valid permits are required of party and charter vessels beginning September 15, 1993. Private vessel permits are required beginning May 15, 1994.

**Mandatory Observer Coverage**

This rule authorizes NMFS to require observers for any vessel that is fishing for, or incidentally catching, Atlantic tunas at any time. Owners of vessels selected for observer coverage are

required to notify NMFS prior to the vessel's departure on a fishing trip.

**Prohibit Unauthorized Gear in the Atlantic Tuna Fisheries**

The rule designates certain types of fishing gear as authorized for use in the Atlantic tuna fisheries and is prohibiting the use of unauthorized gear. Fishermen wishing to employ unauthorized gear to take Atlantic tunas, either as a directed fishery, or as incidental catch, must submit a request to the Director of the Office of Fisheries Conservation and Management (Director) for an experimental fishing exemption.

**Authority To Allocate Underharvest Between Fishing Categories**

NMFS revises 50 CFR 285.22 to authorize the AA to make adjustments to quotas by transfers of quotas between fishing categories if, during any year of a single-year quota period, or the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category or, as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer, inseason, any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at § 285.22(f) and the likelihood that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The AA will file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before the date such transfer is to become effective.

**Set-aside for the Late Season General Category Fishery**

This rule sets aside 65 mt of ABT for the General category quota for a late season fishery, instead of the 40 mt set aside in 1992. This will provide for extended fishing for the General category with minimal chance of a closure prior to September 15. This amount for the late-season set aside is based on comments received during the public comment period and on General category landings data since 1982.

**Angling Category Inseason Adjustments**

The rule authorizes the AA to adjust the private boat catch from two school ABT per boat to one per angler or two per angler per trip, as in the charter/party boat sector, and to adjust the charter/partyboat sector to as few as two



fish per vessel, as in the private boat sector, if necessary, to avoid a closure.

#### Technical Changes to the Regulations

A number of technical changes are made to clarify the language or to enhance enforcement of the existing regulations. The changes:

1. Clarify the dividing line between the northern and southern regions for management of the Angling category quota;
2. Clarify the meaning of "authorized officer", "postmarking", and "delegated authority";
3. Clarify the prohibitions and authorized activities for incidental take of ABT;
4. Clarify which categories of ABT permits may be held concurrently;
5. Clarify that ABT may not be possessed or landed in areas otherwise closed to fishing;
6. Clarify non-transferability of vessel permits;
7. Clarify references to certain size classes of ABT;
8. Correct misspellings and incorrect cross-references;
9. Eliminate redundant sections;
10. Clarify permit application information requirements; and
11. Clarify language concerning subcategories of ABT fishing categories.

These changes will not affect the conduct of the tuna fisheries except to close "loopholes" and facilitate enforcement. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

In addition, NMFS received written and oral comments that a correction to the regulatory text was needed to clarify the prohibition on landing Atlantic tuna in a form other than round (fins intact) or other than with the head removed and eviscerated. NMFS, in the proposed rule, requested additional comment on the need for flexibility in the regulations governing at-sea processing of all species of Atlantic tuna, as applied to both the commercial and recreational fisheries. Based on public comment and NMFS' ability to identify dressed tunas, this rule changes the prohibition to allow the fins, except for one pectoral fin, and the tail to be removed from dressed tuna, except for bluefin. For bluefin tuna, one pectoral fin and the tail must remain on the carcass when landed.

#### Comments and Responses

1. *Measure:* Require Atlantic bluefin tuna (ABT) dealers to submit daily reports via fax and replace the weekly report with a bi-weekly report.

*Comment:* There was general agreement with these requirements;

some concern was expressed about the dealers who only handle a few fish and do not have fax machines.

*Response:* NMFS acknowledges that all dealers do not have fax machines. However, commercial fax services are available at modest cost at many private and public sites. NMFS believes that the requirement to fax daily reports will not pose undue hardship and that the requirement is needed to ensure accurate and timely quota monitoring.

*Comment:* There were several suggestions that daily fax reports not be required until the quota is close to being filled.

*Response:* Since this is the first year for this measure and it might be used in the future to replace mailing the daily report, NMFS needs both sets of information for comparative purposes.

*Comment:* There were several comments concerning the difficulty of indicating quality ratings for bluefin tuna on the proposed bi-weekly dealer report.

*Response:* NMFS recognizes that there may be difficulties for some dealers to provide the quality rating of the bluefin tuna they purchase. Thus, NMFS has decided to make the quality rating portion of the form optional.

2. *Measure:* Require permits for vessels fishing in the Angling category.

*Comment:* There was general support for this measure in all areas except New Jersey. Several comments from New Jersey objected to Angling category permits claiming they are nothing but a tax and provide no useful information.

*Response:* NMFS believes that in order to monitor the catch in the Angling category, it is important to have a more accurate count of the universe of angling vessels. Currently, to extrapolate catch per unit of effort estimates to total catch, it is necessary to use an estimate of the total number of vessels in the fishery. With Angling category vessel permits, the universe of angling vessels fishing for bluefin tuna will be known and the catch estimation procedure will be much more timely and accurate. This will help to resolve questions concerning past estimates of catch in the Angling category and will increase confidence in future estimates.

Furthermore, permitting the Angling category vessels will facilitate socio-economic analysis of the ABT recreational fishery. Permits are the most efficient method of improving the data base for the Angling category fishery. Also, permits facilitate notification procedures for Angling category vessels, such as for public meetings or hearings, changes to the bag limits, and season closures.

*Comment:* Some commentators expressed concern that NMFS considers General category vessels to be commercial and that commercial vessels must have U.S. Coast Guard approved safety equipment.

*Response:* NMFS, in its recognition of General category vessels as commercial, is simply acknowledging an existing U.S. Coast Guard determination that vessels having a General category permit are commercial and must have U.S. Coast Guard approved safety equipment onboard.

3. *Measure:* Require at-sea observer coverage on vessels taking Atlantic tunas, if so requested by NMFS.

*Comment:* There was general support for this measure except in Maine, where there was some concern about insurance coverage and interruptions to sailing schedules.

*Response:* NMFS acknowledges general support for this measure. Insurance costs are included in the contract that NMFS has for observer coverage in the Northeast Region and observers in the Southeast Region also are covered while on participating vessels. Current observer programs are operating in a manner as least disruptive as possible, so that interruptions to sailing schedules should be minimal.

4. *Measure:* Allow only authorized gear to be used in the Atlantic tuna fisheries except pursuant to an experimental fishing exemption.

*Comment:* There was considerable support for this measure at every meeting. NMFS received a petition to regulate and study the use of pair trawl gear from the Center for Marine Conservation (CMC). NMFS also received about 3,400 form letters in support of this petition.

*Response:* NMFS is allowing only authorized gear to be used in the Atlantic tuna fisheries, except pursuant to an experimental fishing exemption. This specifically responds to the concerns raised in the CMC petition on regulating pair trawling as an experimental fishery.

*Comment:* A number of individuals, particularly in New Jersey (2,500 letters), submitted comments requesting a ban on pair trawl fisheries.

*Response:* NMFS believes that the experimental fishery provisions in the final rule will limit potential adverse effects of new gear, including pair trawls, while developing an adequate data base to make decisions on whether these gear types should be authorized for directed or bycatch fisheries in the future.

5. *Measure:* Allow the AA to make inseason transfers of potentially



underharvested quota between fishing categories.

*Comment:* There was general support for this measure except in written and oral comments from fishery participants from Maine and New Jersey.

*Response:* NMFS acknowledges the general support and will respond to the negative comments below.

*Comment:* One comment expressed distrust in sole decision-making authority vested in the AA and wanted to see a committee established to make these decisions. Another comment indicated that NMFS should provide more specific criteria for making transfers between categories.

*Response:* NMFS believes that the criteria provided at 50 CFR 285.22(f) (1) through (4) provide proper guidance for the AA to make timely and objective management decisions on this measure. Allocation adjustments are based on the usefulness of information obtained from catches of the particular category, the catches of that category to date and its likelihood of closure without additional allocation, the ability of that category to harvest the additional quota, and the likelihood of overharvest in other categories.

*Comment:* There was some opposition to this measure and concern that it would be used to adversely affect future quotas.

*Response:* NMFS is concerned that large amounts of underharvested quota in any fishing category at the end of the fishing year, if used to increase quota for that category in the following year, may result in excessive allocations and continuing underharvest of quota if the particular gear segment is in fact unable to harvest the additional amount. Allocation of additional quota to a particular category that cannot make use of that amount is inconsistent with the stated management objective of maximizing use of the available quota while sharing the opportunity to fish among as many users as possible. Additionally, the ATCA requires that NMFS provide a reasonable opportunity for domestic fishermen to harvest any quota allocated to the United States under an international agreement. NMFS believes that allowing the AA to make inseason transfers of unharvested quota between categories provides the flexibility needed to collect data necessary for monitoring the status of the stock, minimize economic displacement, and maximize use of the available resource. A number of factors could be involved in underharvest of a category. As more is known about those factors, decisions could be made on long-term reallocation. However, inseason actions taken pursuant to this

measure would not be the sole basis of any decisions that might be made on long-term reallocation.

6. *Measure:* Raise the amount of General category set-aside for the late season ABT fishery from 40 mt to 65 mt.

*Comment:* NMFS received comments supporting, objecting to, and suggesting compromise on this issue. All but one comment at the Maine meeting opposed the proposed 100 mt set-aside for the late season fishery but there was support for the concept of a late season fishery.

*Response:* NMFS recognizes the concern of the commenters in Maine that a 100 mt set-aside could cause an early season closure and reduced the set aside to 65 mt, which should allow the season to remain open until the 65 mt set-aside becomes available on September 15.

*Comment:* Other than in the State of Maine, there was more general support for a late-season set aside (not necessarily 100 mt; however, suggestions were made for compromise figures between 50 and 75 mt) and particularly support for the late season fishery with numerous suggestions for an August 1 opening date for the General category fishery.

*Response:* NMFS agrees that the set-aside concept would help ensure that a portion of the annual quota would remain for traditional late-season fisheries. NMFS believes a late-season set-aside has merit from a scientific standpoint (e.g., continuing the collection of data on large medium and giant ABT through September, and potentially into October) and could have positive economic impacts due to the higher prices usually received for ABT in late summer and early fall. NMFS believes that a 65 mt set-aside will provide for a late-season fishery with minimal chance of a closure prior to September 15. The selection of 65 mt as the amount of the set-aside is supported by General category landings data since 1982.

7. *Measure:* Allow for inseason adjustments to the Angling category bag and boat limits for private, party and charter boats.

*Comment:* Comments were received recommending that the private boat sector be treated in a similar manner, in terms of the bag limits, as the charter/partyboat sector. In addition, public comment indicated that closures can adversely impact the recreational sector to a greater degree than lower bag or boat limits.

*Response:* NMFS believes the data collected during 1992 provide adequate justification for allowing the AA the flexibility to adjust the private boat

catch from two school ABT per boat to one per angler or two per angler per trip, as in the charter/party boat sector, and to adjust the charter/partyboat sector to as few as two fish per vessel, as in the private boat sector, if necessary to avoid a closure. Such flexibility will provide more options for regulating both the charter/party and the private boat fisheries and will help to reduce the likelihood of closures in the recreational sector.

8. *Measure:* Make other technical changes to enhance administration, management and enforcement.

*Comment:* NMFS received few comments on the technical changes; of the few received most were in support.

*Response:* NMFS acknowledges the support for this measure.

*Comment:* NMFS received written and oral comments that a correction to the regulatory text is needed to clarify the prohibition on landing Atlantic tuna in a form other than round (fins intact) or other than with the head removed and eviscerated.

*Response:* Based on these comments and NMFS' ability to identify dressed tunas, changes have been made to this prohibition to allow the fins, except for one pectoral fin, and the tail to be removed from dressed tuna, except for bluefin tuna. For bluefin tuna, one pectoral fin and the tail must remain on the carcass when landed.

#### Changes From the Proposed Rule

Based on comments received, and further analysis of landings data, the following changes were made to the proposed rule.

*Dealer reporting.* In § 285.29(b)(1), the mandatory quality rating requirement has been made optional.

*Angling category permits.* The effective dates for these permits have been changed to September 15, 1993, for charter/party vessels and May 15, 1994, for private vessels.

*General category set-aside.* The ABT late season set-aside has been reduced from 100 mt to 65 mt. It was 40 mt in 1992.

*Other changes to the rule.*

In § 285.3, the prohibition in paragraph (f) against landing tuna is revised to read, "any person or vessel subject to the jurisdiction of the United States to land: (1) Any tuna, except bluefin, in forms other than round (fins intact), or other than eviscerated with the head, tail, and fins removed, except that one pectoral fin must remain attached; and (2) bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and tail must remain attached." Also, a



prohibition is added to make it unlawful to violate any conditions specified in any exemption authorization issued under § 285.7.

#### Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

The AA has determined, based on the Regulatory Impact Review (RIR) prepared for this rule, that this is not a "major" rule requiring a Regulatory Impact Analysis under E.O. 12291.

This rule contains several new collection-of-information requirements subject to review under the Paperwork Reduction Act and revises and continues requirements all of which were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648-0202 and 0648-0239. Changes in the information requested on permit applications and on dealer reports involved changing or deleting several words in the existing regulatory text. However, the public reporting burden for permit application collections of information is not expected to change from the present average of 30 minutes per response for a new vessel permit application and 15 minutes per response for a vessel permit renewal. The revised public reporting burden for collections of information on dealer reports are estimated at 2.5 minutes per response for daily dealer reports, and 33 minutes per response for bi-weekly dealer reports. The burden for inspection notification for purse seine vessels remains unchanged at 5 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

New collection-of-information requirements are associated with requests for permitting the Angling category, experimental fishing exemptions, and mandatory observer coverage. The public reporting burden for Angling category permits is expected to average 30 minutes for a new application and 10 minutes for a renewal (in the case that a vessel owner would be applying for an Angling category permit in addition to renewing a current General category permit). The public reporting burden for an experimental fishing exemption is expected to average 1 hour to apply for an exemption, and 2 hours per report on exempted fishing activities. The public

reporting burden for vessel owners selected for observer coverage is estimated to average 1 hour per observed fishing trip. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention NOAA Desk Officer).

#### List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 24, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:

#### PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, new definitions for *drift gillnet*, *Fisheries Science Center Director*, and *postmark* are added and the definitions of *authorized officer* and *Secretary* are revised to read, in alphabetical order, as follows:

#### § 285.2 Definitions.

\* \* \* \* \*

*Authorized officer* means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

\* \* \* \* \*

*Drift gillnet*, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not attached to a vessel, designed to be suspended vertically in the water to entangle the head or other

body parts of fish that attempt to pass through the meshes.

\* \* \* \* \*

*Fisheries Science Center Director* means:

(1) For areas south of Virginia, the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee; or

(2) For Virginia and areas to the north, the Science and Research Director, Northeast Fisheries Science Center, NMFS, 166 Water Street, Woods Hole, MA 02543-1097, telephone 508-548-5123.

\* \* \* \* \*

*Postmark* means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt or a receipt issued upon hand delivery to an authorized representative of NMFS.

\* \* \* \* \*

*Secretary* means the Secretary of Commerce, or a designee.

\* \* \* \* \*

3. Section 285.3 is amended by revising the introductory text, paragraphs (f) and (h) and adding paragraphs (i) through (p) to read as follows:

#### § 285.3 Prohibitions.

It is unlawful:

\* \* \* \* \*

(f) For any person or vessel subject to the jurisdiction of the United States to land:

(1) Any tuna, except bluefin, in forms other than round (fins intact), or other than eviscerated with the head, tail, and fins removed, except that one pectoral fin must remain attached; and

(2) Bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and tail must remain attached.

\* \* \* \* \*

(h) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(i) For any person to assault, impede, oppose, intimidate, or interfere with, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.



(j) For any person or vessel subject to the jurisdiction of the United States to fish for, catch, or retain any species of Atlantic tuna with gear that is not authorized under § 285.9, unless authorized under § 285.7.

(k) For any person to possess any Atlantic tuna on board a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 285.9, unless authorized under § 285.7.

(l) For any person to violate any conditions specified by the Director in any exemption issued under § 285.7.

(m) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(n) For any person to assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(o) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an at-sea observer conducting his or her duties aboard a vessel.

(p) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 285.8(c).

4. Sections 285.7 through 285.9 are added to subpart A to read as follows:

#### § 285.7 Experimental fishing exemption.

(a) Upon a written request received at least 30 days before the desired effective date, the Director, in order to provide for the conduct of experimental fishing to gather data needed to make management decisions for the Atlantic tuna resources or fisheries, may exempt any person or vessel from specific requirements of this part.

(b) A request for an exemption must be in writing and received by the Director at least thirty (30) days before the desired effective date. The request must specify any vessel(s) involved, describe the gear to be used, the manner in which the gear will be fished, the duration of the activity, the area where the activity will be conducted, the species of tuna that will be caught, the anticipated bycatch, the port(s) involved and the disposition of the catch, both domestic and foreign. The request must include any fee specified by the Director pursuant to § 285.7(e).

(c) The Director may not grant such exemption unless it is determined that the purpose, design, and administration of the experimental fishing is consistent with the objectives of the management

program, ICCAT recommendations, the provisions of the Atlantic Tunas Convention Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic tunas resources and fisheries; or

(2) Create significant enforcement problems.

(d) Each vessel participating in any experimental fishing activity is subject to all provisions of this part except those specified in the exemption granted that activity by the Director. The conditions, duration of the experimental fishing, and the provisions of this part to which the exemption applies, will be specified in a letter issued by the Director to each vessel or person participating in the exempted activity. This letter must be carried aboard the vessel conducting the exempted activity. Any exemption authorization that has been altered, erased, or mutilated is invalid. A letter of exemption issued under this part is not transferable or assignable. Any violation of any condition in a letter of exemption shall render it null and void upon receipt of written notification from the Director.

(e) The Director may charge a fee to recover the administrative expenses of issuing a letter of exemption. The amount of the fee will be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs. Persons seeking an exemption may contact the Director at (301) 713-2334 to find out the applicable fee. Failure to pay the fee will preclude issuance of the exemption. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any letter of exemption.

#### § 285.8 At-sea observer coverage.

(a) Notwithstanding the selection for placement or the placement of on-board fishery observers under the authority of any other Federal statute or fisheries regulation, NMFS may require observers for any vessel engaged in directed fishing for, or incidentally taking, Atlantic tunas at any time.

(b) Owners of vessels selected for observer coverage are required to notify the appropriate Fisheries Science Center Director before commencing any fishing trip that may result in the harvest of any Atlantic tuna. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

#### § 285.9 Authorized gear.

(a) The following fishing gear is authorized for Atlantic tunas, with the exception of Atlantic bluefin tuna: handline, rod and reel, harpoon, purse seine, longline, and drift gillnet.

(b) Any fishing gear authorized for the categories allocated a quota under subpart B of this part is authorized for Atlantic bluefin tuna.

5. In § 285.21, paragraphs (a), (b), (c), (e), (g), (h), (k) and (l) are revised and paragraph (m) is added to read as follows:

#### § 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for, or takes, Atlantic bluefin tuna must have on board a valid permit issued under this section. Party and charter vessels fishing in the Angling category must have on board a valid permit by September 15, 1993. Private vessels fishing in the Angling category must have a valid permit on board by May 15, 1994.

(b) *Categories of permits.* Except as allowed under paragraph (m) of this section, the Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners



of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(c) *Application procedure.* Permits issued under this section must be renewed annually. A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner or agent on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name, address and telephone number of the vessel owner(s) (for each owner that owns more than a 25 percent interest in the vessel); the name of the vessel; the port where the vessel is docked; the official U.S. Coast Guard documentation or state registration number; the gross tonnage, if known; the length of the vessel; the engine horsepower; the year the vessel was built; the type of vessel construction; the type of vessel propulsion; the vessel's fish hold capacity; the type(s) of fishing gear used; the normal crew size; number of party or charter passengers licensed to carry (if applicable); and the category of the permit. In addition, applicants must submit a copy of the official state registration or U.S. Coast Guard documentation, party charter boat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation, including the names and addresses of all shareholders owning 25 percent or more of the corporation's shares). Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless there is sufficient evidence for the Regional Director to determine that an error involving contradictory

information was made on the application.

\* \* \* \* \*

(e) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or it expires. A permit issued under this section expires when the name of the owner or vessel changes, or upon the renewal date specified on the permit by the Regional Director.

\* \* \* \* \*

(g) *Replacement.* The Regional Director may issue replacement permits when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (k) of this section, may be charged for issuance of the replacement permit.

(h) *Transfer.* A permit issued under this section, except in the case of purse seine permits as allowed under paragraph (b) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

\* \* \* \* \*

(k) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing to the Regional Director. The permit is void if any change in the information is not reported within 15 days.

(m) *Multiple categories.* The following combinations of vessel permits, and fishing activity subject to the provisions governing these categories, are allowed to exist simultaneously aboard a single vessel, although individual fish taken under any permit category remain subject to the provisions of the regulations applicable to that category:

(1) Angling and General category; and

(2) Angling and Incidental Catch (Rod and Reel) category. (Approved by the Office of Management and Budget under OMB control number 0648-0202.)

6. Section 285.22 is amended by revising the introductory text and paragraphs (a) through (e) and adding paragraph (i) to read as follows:

#### § 285.22 Quotas.

The total annual (January 1–December 31) amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 531 mt, of which 65 mt is set aside for a late-season fishery beginning September 15. On the basis of the statistics referenced at § 285.20(b)(1), the AA will project a date when the catch of Atlantic bluefin tuna will equal the annual quota minus 65 mt, and will publish a notification in the *Federal Register* stating that fishing for, retaining, possessing or landing Atlantic bluefin tuna under the early-season quota must cease on that date at a specified hour, and not recommence until September 15, whereupon a quota equal to the difference between the annual quota and the estimated catch prior to September 15 will become available. If the AA determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the AA may set aside an allocation of the late-season quota for such area. The amount of any allocation shall not exceed the greater of 20 mt or the maximum reported landings in the identified area in any of the preceding 3 years. The AA will publish notification of any set-aside allocation and its basis in the *Federal Register*. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 53 mt.



(c) *Purse Seine*. The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 301 mt.

(d) *Angling*. The total annual amount of school, large school, and small medium Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 219 mt. No more than 100 mt of this quota may be school Atlantic bluefin tuna. This quota is further subdivided as follows:

(1) 47 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed south of 38°47' N. latitude.

(2) 53 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed north of 38°47' N. latitude.

(e) *Incidental*. The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 226 mt for the 2-year period 1992-1993. This quota is further subdivided as follows:

(1) 85 mt for longline vessels. No more than 67 mt may be caught, retained, possessed, or landed in the area south of 36°00' N. latitude.

(2) For vessels fishing under § 285.23 (a) and (d), 4 mt may be caught, retained, possessed, or landed in the regulatory area.

(i) *Transfers between categories*. The AA is authorized to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period or the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at paragraphs (f) (1) through (4) of this

section, and the probability that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The AA shall file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before such transfer is to become effective.

7. Section 285.23 is amended by revising paragraphs (c)(1), (c)(2) and (d) and by removing paragraph (f) to read as follows:

§ 285.23 Incidental catch.

\* \* \* \* \*

(c) \* \* \*

(1) One fish per vessel per fishing trip landed south of 36°00' N. latitude, provided that at least 2,500 pounds (1,134 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 36°00' N. latitude.

(d) *Rod and reel*. Subject to the quotas in § 285.22, any person operating a vessel issued a permit for the Angling category and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one large medium or giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes.

\* \* \* \* \*

8. Section 285.24 is amended by redesignating paragraphs (d) (2) and (3) as (d) (3) and (4) respectively, revising new paragraph (d)(4), and adding a new paragraph (d)(2) to read as follows:

§ 285.24 Catch limits.

\* \* \* \* \*

(d) \* \* \*

(2) The AA may change the per angler limit to a per boat limit or a per boat limit to a per angler limit, and may increase the bag limit for school tuna for anglers on party and charter boats from one to two, and may reduce it from two to one, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota over the longest possible period of time. The AA shall publish a notification in the Federal Register of any adjustment in the bag limit.

\* \* \* \* \*

(4) *Private boats*—Private boat anglers may catch, retain, possess, or land each day the bag limit for anglers specified in paragraph (d)(1) of this section for the number of anglers on board; provided, however, that no more than one small medium and two school bluefin tuna may be retained on board a vessel each day, regardless of the number of anglers on board.

9. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

\* \* \* \* \*

(c) *Inspection*. Any owner of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic bluefin tuna. The vessel owner must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508-563-5721 or 508-281-9261. Purse seine vessel owners must have each large medium and giant bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

\* \* \* \* \*

10. Section 285.26 is amended in the table by revising the entry for "school" under the heading "size classes" to read as follows:

§ 285.26 Size classes.

\* \* \* \* \*

Size class	Total fork length	Pectoral fin fork length	Approx. round weight
School	26 to <45 in	19 to <33 in	14 to <66 lbs.



\* \* \* \* \*  
 11. Section 285.28 is amended by revising paragraphs (b) and (j) to read as follows:

**§ 285.28 Dealer permits.**

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

12. Section 285.29 is amended by revising paragraphs (a), (b) and (d) to read as follows:

**§ 285.29 Dealer recordkeeping and reporting.**

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the existing postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508-281-9135) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish

and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where the fish was caught.

(b) Must submit to the Regional Director a bi-weekly report on forms supplied by NMFS.

(1) Said report must be postmarked and mailed within 10 days after the end of each 2-week reporting week period in which Atlantic bluefin tuna were purchased, received, or imported. Each report must specify accurately and completely for each tuna purchased: Date of landing or import; vessel ABT permit number (if appropriate); metal tail tag number; weight in pounds or kilograms (specify if round or dressed); nature of the sale (dockside or consignment); price per pound or kilogram (round or dressed weight); and destination of the fish (domestic or export). In addition, dealers may indicate the quality rating of their bluefin tuna: (A, B, or C) for four attributes (freshness, fat, color, and shape).

(2) At the top of each form, the dealer must indicate the company name, license number, and the name of the person filling out the report. In addition, the beginning and ending dates of the 2-week reporting week period must be specified by the dealer and noted at the top of the form.

(d) Must retain at his/her place of business a copy of each daily report (including proof of FAX transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was submitted to the Regional Director.

13. Section 285.30 is amended by revising paragraph (c)(2) to read as follows:

**§ 285.30 Metal tags.**

(c) \* \* \* \* \*  
 (2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing said Atlantic bluefin tuna and make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a metal tag to it. The offices to contact are: Portland, ME (207-780-3241); Otis Air Force Base, MA (508-563-5721); Brielle, NJ (201-528-3315); Atlantic Beach, NC (919-247-4549);

Brunswick, GA (912-265-0108); Miami, FL (305-361-4224); St. Thomas, U.S. Virgin Islands (809-774-5226); San Juan, Puerto Rico (809-782-8686); St. Petersburg, FL (813-893-3145); St. Joe, FL (904-227-1879); or Corpus Christi, TX (512-888-3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

14. Section 285.31 is amended by revising the word "bluefish" to read "bluefin" in paragraphs (a) (1), (2) and (5) and by revising paragraphs (a) (10), (16), (26), (30) and (31), and removing paragraph (a)(32); and redesignating paragraphs (a)(33) through (a)(38) as paragraphs (a)(32) through (a)(37), respectively, to read as follows:

**§ 285.31 Prohibitions.**

(10) Land any Atlantic bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and the tail must remain attached.

(16) Engage in fishing with a vessel issued a permit under § 285.21 unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any Atlantic bluefin tuna under control (secured to the catching vessel or aboard) with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

(26) Fish for, catch, retain, possess or land Atlantic bluefin tuna with longline gear except as provided in § 285.23(c);

(30) Fish for, catch, retain, possess or land Atlantic bluefin tuna from the Gulf of Mexico except as specified under § 285.23 (c), (d) and (l);

(31) Fish for or catch or retain Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.22, 285.23, and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

15. Section 285.50 is revised to read as follows:

**§ 285.50 Authorized fishing.**

Fishing for, catching, retention or possession of yellowfin and bigeye tuna



in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for

(a) Vessels employing gear types specified at § 285.9 unless the gear is authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

(b) Yellowfin or bigeye tuna that weigh 7 pounds round weight (3.2 kg) or more, except as provided in § 285.52.

[FR Doc. 93-20876 Filed 8-26-93; 8:45 am]  
BILLING CODE 3510-22-P



# Proposed Rules

Federal Register

Vol. 58, No. 165

Friday, August 27, 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 AGRICULTURE

### Federal Grain Inspection Service

#### 7 CFR Part 68

#### Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

AGENCY: Federal Grain Inspection Service, USDA.<sup>1</sup>

ACTION: Advance notice of proposed rulemaking.

**SUMMARY:** According to the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) invites comments and suggested changes to subpart A of the part 68 regulations under the Agricultural Marketing Act of 1946, as amended (Act).

**DATES:** Comments must be submitted on or before November 26, 1993.

**ADDRESSES:** Written comments must be submitted to George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC, 20090-6454; FAX (202) 720-4628.

All comments received will be made available for public inspection in room 0624 USDA South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** George Wollam, address as above, telephone (202) 720-0292.

**SUPPLEMENTARY INFORMATION:** This periodic review of subpart A of the part 68 regulations under the Act is being conducted in accordance with Executive Order 12291 and Departmental Regulation 1512-1. During this review, FGIS will assess the need for revising

these regulations, the potential for improvement, and language clarity. Specifically, FGIS will review the need to:

1. Eliminate the special appeal inspection requirements for rice (i.e., requests must be made before the rice has left the place of inspection and no later than the close of business on the second business day following the day of the inspection being appealed);

2. Eliminate the provisions for requesting, performing, and certifying new original inspections;

3. Allow requests for divided-lot certificates to be made for up to one year from the outstanding certificate date and, at the discretion of the Service, after the identity of the commodity has been lost;

4. Require applicants for inspection to provide suitable working space (e.g., clean and heated/cooled) when inspection service is performed at a plant;

5. Establish a commercial inspection service that would allow the use of modified sampling and inspection procedures;

6. Eliminate the required issuance of inspection certificates;

7. Establish an inspection equipment testing service; and

8. Extend the validation period of inspector, technician, and sampler licenses from 3 to 5 years and allow the license termination date to be advanced or delayed, when necessary, by a period not to exceed 120 days.

Public comments are requested and any data, views, or arguments are welcome.

**Authority:** Secs. 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: August 11, 1993.

David R. Galliard,  
Acting Administrator.

[FR Doc. 93-20744 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-EN-M

## Agricultural Marketing Service

### 7 CFR Part 1138

(DA-93-25)

#### Milk in the New Mexico-West Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice invites written comments on a proposal that would suspend certain provisions of the New Mexico-West Texas Federal milk order. The proposal would suspend for two years the provisions of the New Mexico-West Texas order that limit diversions of producer milk. The request for the suspension was made by Associated Milk Producers Association, Inc. (AMPI), which represents most of the producers who deliver milk to plants regulated by the New Mexico-West Texas order. AMPI requested this suspension to allow pooling all of the milk produced by its members in that area.

**DATES:** Comments are due no later than September 27, 1993.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

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

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they

<sup>1</sup> The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).



present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), suspension for a two-year period of the following provisions of the order regulating the handling of milk in the New Mexico-West Texas marketing area is being considered.

1. In § 1138.7, paragraph (a)(1), the words "Including producer milk diverted from the plant,";
2. In § 1138.7, paragraph (c), the words "35 percent or more of the producer"; and
3. In § 1138.13(d), paragraphs (1), (2), and (5).

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 30th day after publication of this notice in the *Federal Register*.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

#### Statement of Consideration

The proposed suspension was requested by Associated Milk Producers Association, a cooperative association representing the vast majority of producers for the New Mexico-West Texas market. AMPI has requested the suspension of certain provisions in the New Mexico-West Texas order to allow pooling all of the milk produced in the area by AMPI's members.

AMPI requests for a two-year period the suspension of order provisions that in one way or another limit the pooling of diverted milk.

AMPI's request states that milk production in New Mexico alone has slightly more than doubled in the last five years (from 1,094 million pounds in 1988 to 2,249 million pounds in 1992). At the same time, Class I use has remained stable at about 60-65 million pounds each month. AMPI expects production increases to continue. AMPI further indicates an expectation that cheese production will expand because local milk supplies are available. However, under current provisions of the New Mexico-West Texas order, all of the milk available cannot be pooled.

For these reasons, AMPI proposes to suspend:

1. The provision that requires that diverted milk be included as a receipt at distributing plants for computing whether the plants are "pool plants";
2. The requirement that a cooperative association must deliver at least 35 percent of its milk supply to distributing plants in order to pool a plant located in the marketing area that is operated by the cooperative association and is neither a distributing plant nor a supply plant;
3. The requirement during the months of September through January that a producer's milk must be delivered to a pool plant at least one day per month to be eligible to be diverted to a nonpool plant on other days of the month;
4. The provision that allows a cooperative association to divert an amount of milk that does not exceed the amount delivered to and physically received at pool plants during the month; and
5. The provision that eliminates from the pool any diverted milk that would cause a plant to lose its status as a pool plant because too much diverted milk had been considered as a receipt at the pool plant.

The suspension of these provisions apparently would allow AMPI to pool all the milk produced in the area by its members. AMPI has requested that these provisions be suspended for two years, beginning as soon as possible.

#### List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

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

Dated: August 23, 1993.

L.P. Massaro,  
Acting Administrator.  
[FR Doc. 93-20868 Filed 8-26-93; 8:45 am]  
BILLING CODE 3410-02-P

#### Food Safety and Inspection Service 9 CFR Parts 309, 310 and 317

[Docket No. 89-031R]

RIN 0583-AB18

#### Policy for Differentiating Between Calves and Adult Cattle

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule; withdrawal and reproposal.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to provide standard criteria by which FSIS inspectors will determine whether a bovine animal or animal carcass declared to be a calf or calf carcass is properly identified as such under the Federal Meat Inspection Act. This provision would assure that appropriate inspection procedures are applied and better assure that products labeled as coming from calves are labeled accurately.

This proposed rule is a reproposal of a proposed rule which was published on June 6, 1990, in the *Federal Register* (55 FR 23100), which is hereby withdrawn. Comments received on the June 6, 1990, proposed rule and the Agency's desire to amend and clarify certain provisions of the proposal have resulted in a number of changes to the proposed rule prompting the Agency to provide an additional opportunity for comments before consideration is given to the issuance of a final regulation.

**DATES:** Comments must be received on or before: September 27, 1993.

**ADDRESSES:** Written comments to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also **Comments under SUPPLEMENTARY INFORMATION.**)

**FOR FURTHER INFORMATION CONTACT:** Dr. Craig Reed, Deputy Administrator, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-5190.



## SUPPLEMENTARY INFORMATION:

## Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

## Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. State and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing requirements with respect to the operations of any establishment at which inspection is provided under Title I of the FMIA, or any marking, labeling, packaging, or ingredient requirements on federally inspected meat or meat products, which are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not as such establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This proposed rule is not intended to have retroactive effect, and there are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule.

## Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this action will not have a significant economic impact on a substantial number of small

entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

The majority of calf producers and establishments slaughtering calves are small entities. By providing relatively simple, objective criteria by which inspectors may identify calves, the proposal would permit more consistent and accurate labeling of products, and promote fair competition in the marketplace. Such uniformity is important since meat products derived from calves generally yield higher prices than meat products derived from adult bovine animals.

## Paperwork Requirements

The proposal would allow an establishment to submit documentary evidence to the Veterinary Medical Officer (VMO) to prove that an animal is no more than 9 months of age in cases where the establishment disputes a determination made by the VMO. The paperwork requirements will be submitted to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket No. 89-031R. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and 1:30 p.m. and 4 p.m., Monday through Friday.

## Background

The United States has had mandatory inspection for meat and meat food products prepared for distribution in commerce since 1906. The FMIA requires the inspection by an inspector appointed by the Secretary of Agriculture of certain domesticated animals such as cattle, prior to their entering an establishment for slaughter, and the post-mortem inspection of their carcasses and parts thereof in any establishment preparing such articles for distribution in commerce for human food purposes. The purpose of both ante-mortem and post-mortem inspection is to assure that the carcass of the animal slaughtered and parts thereof are wholesome and not adulterated. In addition, the FMIA requires that the Federal inspector inspect meat products made from such carcasses and parts to assure that they are not adulterated and are properly labeled, marked and packaged.

FSIS has been petitioned by the Southwest Meat Association to establish criteria, based principally on weight, to

differentiate between beef cattle and calves. The petitioner requests that the weight limits for calves be established at 750 pounds live weight and 450 pounds carcass weight and that the animal in question be an obviously young animal before it is designated as a calf.

FSIS inspectors frequently must differentiate calves from adult bovine animals to assure the application of appropriate inspection procedures, including those relating to the labeling of inspected product. The meat products derived from "calves," when so labeled, generally command a premium price, because the tissues of immature cattle have flavor and texture properties that are unique and considered desirable.

In the vast majority of instances, there is no question that animals presented for inspection as calves are, in fact, calves. However, there are instances when it is not clear whether certain animals are adult bovine animals or calves. If a question arises, the inspector must make a subjective determination which is influenced greatly by the inspector's knowledge, skills and experience with such animals.

Current policy on what constitutes a calf for FSIS inspection and labeling purposes (other than for certain residue testing) is based on custom and practice in the industry. Inspectors may assess a number of factors including weight of the animal, age of the animal, meat color and texture, teeth formation and bone formation. FSIS inspectors generally consider a bovine animal to be a calf if the animal's weight is 600 pounds or less. However, inspectors in different parts of the country have used various other criteria, resulting in inconsistent determinations of what animals and animal products are appropriately labeled "calf."

## The June 1990, Proposal

On June 6, 1990, FSIS published a proposed rule in the Federal Register (55 FR 23100) to amend the Federal meat inspection regulations to provide criteria by which inspectors will determine whether a bovine animal or animal carcass declared to be a calf or calf carcass is properly identified as such under the FMIA.

The proposal defined "calf," for inspection purposes, as a "young" bovine animal whose weight does not exceed 750 pounds live, or whose dressed carcass weight does not exceed 450 pounds with the hide on, or 425 pounds with the hide removed. In addition, since the degree of maturation may be indicated by factors other than weight, physical indicators of maturity could be used in conjunction with weight limits to differentiate "calves"



from cattle. The proposal provided that if an inspector has reason to believe that an animal or animal carcass whose weight is within the prescribed weight limitations for a calf is actually that of an adult animal, the inspector could segregate the carcass and request that a VMO examine it for physical indicators of maturity and make a determination of whether it is "calf." If the VMO determined that certain physical indicators of maturity were present, the bovine animal would not be considered to be a "calf" for purposes of this regulation.

The proposal also provided that FSIS inspectors would accept determinations made by Agricultural Marketing Service (AMS) graders as to the age of the animal, for purposes of ante-mortem inspection, post-mortem inspection and labeling requirements of the FMIA.

#### Response to Comments

The Agency received 11 comments in response to the proposed rule. The following is a summary of the comments and the Agency's responses.

*Comment:* The American Veterinary Medical Association supports the proposed rule, stating that it will provide a uniform standard criterion for segregating calves and adult cattle for inspection purposes. However, they believe greater emphasis should be placed on closer examination of the physical characteristics of the larger "calves" to differentiate between heavier, faster grown calves and lighter, slower grown adults.

*Response:* The proposed regulations provide criteria for inspectors to follow when determining whether an animal is a calf or an adult bovine animal for inspection purposes. In addition, in cases where the inspector has observed certain physical characteristics and has reason to believe that the animal in question is an adult animal, the inspector may request that a VMO examine the animal in question to determine whether it is a calf or an adult animal. The Agency believes that the provisions regarding examination of the physical characteristics, together with other changes made in this proposal, are sufficient to assure that animals presented for inspection as "calves" are properly identified.

*Comment:* A professor at Auburn University stated that the weight limit of 750 pounds was too high and suggested that it be set at 500 pounds. The professor asserts that many light weight dairy cows or beef cows are sexually mature at weights lower than 750 pounds.

*Response:* The Agency has research data<sup>1</sup> and other information to indicate that producers are capable of producing calves with weaning weights as high as 750 pounds. In addition, the Agency believes that the provisions providing for VMO review of questionable animals and carcasses will prevent improper identification of sexually mature dairy and beef animals as calves.

*Comment:* The law firm of Hogan and Hartson stated that the proposal does not address problems facing processors who receive the product after the initial determination has been made and are not on site when the "calf-adult animal" decision is made. The commenter is concerned that an inspector or an AMS grader at a second establishment may overrule the decision made at the first establishment as to whether the animal was a calf. Thus the proposal may not protect processors who, in good faith, buy products labeled "calf" for further processing. The firm also stated that, as an additional aid in determining whether an animal is a calf or an adult, receipt of written certification from the producer verifying the age and characteristics of the animal should be added to the list of indicators. Accordingly, the regulations should include a provision that the Agency will accept certified documentation from the producer that an animal is a calf for purposes of establishing the proper labeling of products derived from the animal.

*Response:* FSIS believes that accurate determinations regarding whether an animal presented for inspection is a calf or an adult bovine can and should be made upon examination of the animal or its carcass by the inspector and/or the VMO at the slaughter facility. In addition, the determination made by the inspector at the slaughter establishment is based, in large part, on criteria which are not available to inspectors or graders at processing establishments. Therefore, a decision that an animal is a calf, made at the time the animal is presented for slaughter, could not be overruled at another establishment. In addition, in this proposal, FSIS is removing the provision that FSIS inspectors will accept AMS grading determinations as to the age of a bovine animal, for purposes of ante-mortem inspection, post-mortem inspection and labeling requirements of the FMIA. Because the Agency has determined that accurate determinations can be made by the inspection program inspector and the

VMO, providing for an alternate, extra-agency determination on whether or not a bovine animal is a "calf" is confusing and unnecessary. Therefore, the FSIS determination will be dispositive as to the identity of the animal under the FMIA. The animal will be inspected and labeled accordingly.

FSIS agrees that documentation from the producer certifying an animal as a calf for inspection purposes is useful and has added provisions to this proposed rule for use of such documentation in cases where the inspector's determination is disputed. The primary criteria for determining whether an animal presented for slaughter is a calf would be based on the weight of the animal. However, if an inspector believes, through observation of certain physical characteristics, that an animal or animal carcass within the weight limitation for a calf is actually an adult animal or adult animal carcass, the inspector may segregate the animal or animal carcass and request that a VMO examine it to determine whether it is a "calf." Under these circumstances, the establishment may present documentary evidence that the animal is no more than 9 months of age. The credibility of the documentary evidence will be determined by the VMO and will be used in conjunction with their examination of the animal or animal carcass, when determining whether it is a calf or an adult animal.

*Comment:* Seven comments—two from trade associations and five from meat packers—stated that they see no need to provide a 25-pound weight adjustment for dressed calves; i.e., 450-pound weight limit for hide-on carcasses and 425-pound weight limit for hide-off carcasses. The commenters stated that they would prefer the weight limit for a dressed carcass be 450 pounds as provided in the interim guidelines issued by the Agency on December 21, 1989. These commenters stated that the vast majority of calves are shipped without the hide.

*Response:* The Agency agrees with the commenters. The interim guidelines<sup>2</sup> provide, in part, that products from animals weighing up to 750 pounds live or up to 450 pounds dressed may be labeled "calf." In addition, FSIS has received information to indicate that a 25-pound weight allowance for "hide on" dressed carcasses is unnecessary as the vast majority of establishments are "hot skinning" calf carcasses to remove skins immediately after slaughter.

<sup>1</sup> A copy of the data is on display with the FSIS Hearing Clerk, Policy Office, room 3171, South Building, U.S. Department of Agriculture, Washington, DC 20250. Upon request, a copy of the data will be provided free of charge.

<sup>2</sup> A copy of the interim guidelines is on display with the FSIS Hearing Clerk, Policy Office, room 3171, South Building, U.S. Department of Agriculture, Washington, DC 20250. Upon request, a copy will be provided free of charge.



which results in dressed carcasses being shipped without the hide. In reassessing its interim guidelines, FSIS has determined that the use of these guidelines has resulted in accurate and proper identification of animal carcasses, and that the guidelines have been widely accepted by the industry. Therefore, FSIS has deleted the weight adjustment for dressed calves in this proposed rule.

*Comment:* The United States Hide, Skin and Leather Association is requesting that the Agency make clear in the final rule that the definition of calf is not intended to be interpreted to apply to the skins coming from these animals. The commenter stated that one of the products resulting from calf slaughter is the calf skin, and their concern is that the definition of calf could be interpreted to apply to skins as well as edible products.

*Response:* FSIS is responsible for proper disposition of carcasses and parts, which includes the hides. However, FSIS does not anticipate that the age determinations made pursuant to the criteria in this document will have any appreciable effects on the activities of the hide, skin, and leather industry.

#### Changes to the June 1990 Proposal

This proposed rule modifies the June 1990 proposal based on comments received on that proposal and FSIS's desire to amend and clarify certain provisions of that proposal. The following is a brief description of the changes to the June 1990 proposal. These changes are discussed in more detail later in this document.

1. The term "young" as it applies to calves has been clarified to mean a bovine animal no more than 9 months of age.
2. The 25-pound weight allowance for "hide on" dressed carcasses has been deleted.
3. The provisions relating to determinations made under the Agricultural Marketing Act have been deleted.
4. Provisions for presenting documentary evidence as to the age of the animal have been added.

#### The Proposal

FSIS would define "calf," for inspection purposes, as a young bovine animal, no more than 9 months of age, whose weight does not exceed 750 pounds live or whose dressed carcass weight does not exceed 450 pounds. Research conducted by the Texas Agricultural Extension Service indicates that producers are capable of producing 7-month old calves with weaning

weights as high as 750 pounds. It is estimated that the dressed weight for a 750-pound calf would be no more than 450 pounds.

Since the degree of maturation may be indicated by factors other than weight, physical indicators of maturity to determine the age of an animal could be used in conjunction with weight limits to differentiate "calves" from adult cattle. The physical changes that occur around 9 months of age allow for such differentiation. These physical indicators of maturity are teeth formation, bone formation, and pregnancy. If an inspector has reason to believe, through observation of these physical characteristics, that an animal or animal carcass whose weight is within the weight limitation for a calf is actually an adult animal or adult animal carcass, the inspector may segregate the animal or animal carcass and request that a VMO examine it for physical indicators of maturity and make a determination of whether it is a calf or calf carcass. Upon examination, if the VMO determines that the bovine animal is pregnant, or has any permanent teeth other than the first molar, or has a mature bone structure, the bovine or bovine carcass would not be considered to be a calf or calf carcass for purposes of this regulation. In instances where such determination is disputed, the establishment could present to the VMO documentary evidence that the animal is no more than 9 months of age or that the carcass derived from a bovine animal is no more than 9 months of age. The credibility of the documentary evidence will be determined by the VMO and will be used in conjunction with the VMO's examination of the animal or animal carcass to determine whether it is a calf or a calf carcass. The VMO would make the final determination of the age of the animal.

Products from animals that have been determined to be adult bovine animals over the age of 9 months would not be permitted to be labeled as "calf."

In addition, as discussed above, FSIS is removing from the proposal the provisions relating to graders under the Agricultural Marketing Act. Under this proposed rule, determinations as to whether a bovine animal presented for inspection is a "calf" or an adult bovine will be made by inspectors at the slaughter facility. The FSIS determination will be dispositive as to the identity of the animal under the FMIA. The animal will be inspected and labeled accordingly.

#### List of Subjects

##### 9 CFR 309

Calf, Meat inspection, Requirements, Definitions.

##### 9 CFR 310

Calf, Meat inspection, Requirements, Definitions.

##### 9 CFR 317

Calf labeling.

For the reasons set forth in the preamble, 9 CFR 309, 310, and 317 would be amended as follows:

#### PART 309—ANTE-MORTEM INSPECTION

1. The authority citation for part 309 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 309.1 would be amended by adding new paragraphs (c) and (d) to read as follows:

##### § 309.1 Ante-mortem inspection in pens of official establishments.

\* \* \* \* \*

(c) As set forth in this part, ante-mortem inspection is intended primarily to prevent the use in commerce of meat and meat food products which are adulterated. Inspectors also may be required to inspect animals in accordance with other sections of this chapter.

(d) In order to be classified as a calf for any purpose other than for residue testing under § 309.16(d), a bovine animal must be young (not more than 9 months of age) and weigh 750 pounds or less at the time it is presented for ante-mortem inspection. However, if the inspector has reason to believe, through observation of certain physical characteristics, that the animal weighing less than 750 pounds may nevertheless be an adult animal over 9 months of age, the inspector may request a USDA Veterinary Medical Officer to undertake an examination of the animal to detect the following indicators of maturity: permanent teeth (other than the first molar), mature bone structure, and pregnancy. When, in the judgment of the Veterinary Medical Officer, one or more physical indicators of maturity are present, the carcass of the animal shall, regardless of weight, be considered that of an adult animal over 9 months of age and shall be inspected pursuant to § 310.1(a)(2) of this subchapter and labeled accordingly: *Provided, however,* that if the establishment presents to the Veterinary Medical Officer documentary evidence that the animal in question is 9 months of age or younger, such



documentation will be considered by the Veterinary Medical Officer, along with his or her physical examination of the animal, to determine whether such animal is a calf or an adult bovine animal. The credibility of the documentary evidence will be determined by the VMO. The VMO's determination of the age of the animal is final.

3. Section 309.16(d) would be amended by revising the introductory text to read as follows:

**§ 309.16 Livestock suspected of having biological residues.**

(d) Calves shall not be presented for ante-mortem inspection in an official establishment except under the provisions of this paragraph, and the provisions of § 309.1.

**PART 310—POST-MORTEM INSPECTION**

4. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

5. Section 310.1 would be amended by revising the heading, redesignating paragraph (a) as paragraph (a)(1), and by adding new paragraphs (a)(2) and (a)(3) to read as follows:

**§ 310.1 Extent, scope and time of post-mortem inspection; staffing standards.**

(a)(1) \* \* \*

(2) As set forth in this part, post-mortem inspection is intended primarily to prevent the use in commerce of meat and meat food products which are adulterated. Inspectors also may be required to inspect carcasses and parts in accordance with other sections of this chapter.

(3) In order to be classified as a calf for any purpose other than for residue testing under § 310.21(b), the dressed weight of a carcass shall not exceed 450 pounds. For purposes of this paragraph, the term "dressed weight" shall mean the weight of the carcass minus the head, skin, blood, and viscera. However, if an inspector has reason to believe, through observation of certain physical characteristics, that the carcass which weighs less than 450 pounds and which is represented to be a calf when presented for post-mortem inspection may nevertheless be that of an adult animal over 9 months of age, the inspector may request a USDA Veterinary Medical Officer to undertake an examination of the carcass to detect the following physical indicators of

maturity: Permanent teeth (other than first molar), mature bone structure, and pregnancy. When, in the judgment of the Veterinary Medical Officer, one or more physical indicators of maturity are present, the carcass shall, regardless of weight, be considered that of an adult animal over 9 months of age and shall be inspected and labeled accordingly: *Provided, however,* that if the establishment presents to the Veterinary Medical Officer documentary evidence to prove that the carcass in question is that of a bovine animal 9 months of age or younger, such documentation will be considered by the Veterinary Medical Officer, along with his or her physical examination of the carcass, to determine whether the carcass is that of a calf or an adult bovine animal. The credibility of the documentary evidence will be determined by the VMO. The VMO's determination of the age of the animal is final.

**PART 317—LABELING, MARKING DEVICES, AND CONTAINERS**

6. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

7. Section 317.8 would be amended by adding a new paragraph (b)(38) to read as follows:

**§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.**

(a) \* \* \*

(b) \* \* \*

(38) Product labeled with the term "calf" shall not be used in such a manner as to be false or misleading and shall be consistent with the provisions of §§ 309.1 and 310.1 of this subchapter.

Done at Washington, DC, on: August 23, 1993.

Eugene Branstool,  
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-20874 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-DM

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**Small Business Size Standards; Surety Bond Guarantee Program**

AGENCY: Small Business Administration.  
ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase its size standard for the Surety

Bond Guarantee Program to \$6.0 million in average annual receipts. This size standard would be applied to firms in the construction and service industries and would be an increase from the current level of \$3.5 million. This action is being taken to better define the size of business that SBA believes should be eligible for contract surety bond guarantee assistance. Its effect would be to increase the number of firms eligible for assistance under this program.

DATES: Comments must be submitted on or before October 26, 1993.

ADDRESSES: Send comments to Gary Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street SW.-suite 8150, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:**

Carl J. Jordan, Size Standards Staff, Tel: (202) 205-6618.

Dorothy D. Kleeschulte, Office of Surety Guarantees, Tel: (202) 205-6540.

SUPPLEMENTARY INFORMATION: SBA has administered a program of contract surety bond guarantee assistance for small businesses since 1971. The SBA guarantee enables participating surety companies to furnish surety bonds on behalf of small contractors that would be unable to obtain bonding on reasonable terms and conditions without an SBA guarantee. The SBA guarantees the surety company against a percentage of loss it may incur under an eligible contractor's bond. In 1978, the maximum size of firm (i.e., the size standard for a contractor) eligible to utilize this program was established at \$3.5 million in annual average receipts for the general and special trades construction and the service industries. At that time the size standard used for other SBA programs for general construction was \$12 million and for special trades \$5 million. In 1984 these size standards were increased for inflation to \$17 million and \$7 million, respectively. For surety bond guarantee purposes, however, the size standard remained at the \$3.5 million level.

Firms in other industries needing contract surety bonding assistance have continued to use the individual industry size standards established in SBA's 13 CFR 121.601. However, since a significant amount of all contract surety bonding is for construction contracts (either general construction or special trade) this size standard is the key determinant of eligibility for firms to participate in the SBA Surety Bond Guarantee Program.

For a number of reasons SBA is proposing to increase the surety bond guarantee size standard from \$3.5 million to \$6.0 million in average



annual receipts for firms in the industry groups of construction and services.

These reasons are summarized below:

(1) To account for the effect of inflation on the eligibility of firms for the Surety Bond Guarantee Program of the Small Business Administration since the standard was last revised in 1978.

(2) To bring the size standard for surety bonding closer to the size standards used in construction for SBA's procurement and loan programs (\$7 million for special trade contractors and \$17 million for general construction contractors, respectively).

(3) To extend assistance to contracting firms in the \$3.5 to \$6.0 million range who otherwise cannot obtain surety bond on reasonable terms and conditions without an SBA guarantee.

Each of these factors is discussed in greater detail below.

#### (1) Inflationary Impact on Eligibility

Since the surety bond guarantee size standard was established by SBA at \$3.5 million in 1978 (see 43 FR 21689), its real value has been eroded by inflation. As a result, eligibility for the program has declined compared to 1978 when that size standard was instituted. Inflation in the construction industry has been monitored by the U.S. Department of Commerce, Bureau of the Census. Its Implicit Price Deflator (IPD) (63.4 for 1978, 112.3 for 1992) for construction reflects that inflation has increased construction costs by 77.1% between 1978 and 1992. Applying this increase to the \$3.5 million size standard would result in a size standard of nearly \$6.2 million. As a result, in the construction industries alone, SBA estimates that, based on a special tabulation prepared for the SBA by the Census Bureau using 1990 data, approximately 13,000 firms no longer enjoy small business eligibility for the Surety Bond Guarantee Program solely due to inflation. A higher size standard would offset the decrease in eligibility and restore the originally targeted level of coverage.

#### (2) Comparability of Size Standards With Other SBA Programs

Reflecting the different objectives of the SBA Surety Bond Guarantee Program, its size standard for the construction and service industries has been lower than that used for other SBA programs. For example, in the procurement assistance and loan programs the construction size standards for special trade and general construction are \$7 million and \$17 million, respectively. Size standards of the levels are greater than necessary for

the Surety Bond Guarantee Program, since SBA believes small business concerns with sales in excess of \$6.0 million can obtain bonding without an SBA guarantee. A \$6.0 million size standard would bring the surety size standard closer to those used in construction for SBA's other programs, and reflect the Agency's desire to narrow differences in its size standards as they apply to different SBA programs. This will minimize certain inconsistencies in eligibility for SBA's programs, one of which is reviewed below.

In SBA's Minority Small Business and Capital Ownership Development, or 8(a), Program, SBA has been concerned especially about a subgroup of construction firms that, while small in terms of eligibility for 8(a), are not small for SBA guaranteed surety bonds for work awarded under other than 8(a) contracts. This currently occurs when an 8(a) firm has more than \$3.5 million in receipts and desires an SBA guarantee for a surety bond for non-8(a) public or other commercial work to which the \$3.5 million size standard presently applies. For 8(a) contractors, however, the size standard to receive an SBA guaranteed surety bond is higher than \$3.5 million if it is needed for a specific 8(a) contract. Such firms are eligible for SBA guaranteed surety bonds (see 13 CFR 121.1108) as long as they are within the size standards specified in 13 CFR 121.601, that is, for the construction industries, \$7 million in average annual receipts for special trades and \$17 million for general construction. For work not awarded under an 8(a) contract, however, such firms must qualify under the surety bond size standard, currently at \$3.5 million. A higher size standard of \$6.0 million would partially alleviate this situation by expanding the surety bond guarantee eligibility of 8(a) firms for non-8(a) construction contracts and provide a more consistent application of the size standards within the SBA programs.

#### (3) Firms in the \$3.5-\$6.0 Million Range

The purpose of the Surety Bond Guarantee Program is to provide greater opportunities for small businesses to compete in the procurement process through increased surety availability. SBA believes that firms above the \$6.0 million level in the construction and service industries usually have the capacity to secure bonding without an SBA guarantee. Information from surety industry sources as well as SBA's experience indicates that most firms with receipts above \$6.0 million are

sufficiently strong financially to obtain surety bonding in the standard market. However, some firms in the \$3.5 million to \$6.0 million range have experience difficulty in obtaining bonding on reasonable terms and conditions without an SBA guarantee. For this reason, SBA is proposing to limit eligibility to firms whose sales are equal to or less than \$6.0 million in receipts.

In summary, a higher size standard would restore the real or inflation-adjusted value of the size standard to the 1978 level. It would also assist some firms whose financial condition may be inadequate to secure bonding on their own, and more closely fulfill the purpose of the authorizing legislation. It would also narrow differences in size standards for major SBA programs.

For these reasons SBA is proposing to establish a size standard of \$6.0 million to accomplish these objectives.

SBA specifically invites comments on the appropriateness of this revised size standard for the Surety Bond Guarantee Program. Comments should address the questions of (1) the interaction of this size standard with SBA's programs; (2) the relative levels of participation at a different size standard; (3) the effect of this revised size standard on firms in the construction and service industries; and, (4) the prospect of significant new entries into these industries in response to this size standard.

#### Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

##### General

SBA considers that this proposed rule, if promulgated in final form, will impact in terms of eligibility on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and will have a significant economic impact on a substantial number of small entities for purposes of this Act. Eligible contractors remit to the SBA a guarantee fee of \$6 per \$1,000 of the awarded contract price. The amount estimated below in (1) would represent an impact upon newly eligible contractors of approximately \$1.7 million, at the estimated participation level. However, since the contemplated economic impact in terms of the amount of SBA guarantee utilization is approximately \$234 million (see (1), below), it would constitute a major rule for the purpose of E.O. 12291, if promulgated in final form. Immediately below, SBA has set forth a summary regulatory impact analysis and an initial regulatory impact analysis of this proposed rule.



**(1) Description of Entities to Which the Rule Applies**

SBA estimates that 13,000 additional firms (or an additional 2.5 percent), out of a total of 529,000 firms in the construction industries, would gain small business status for the Surety Bond Guarantee Program if this proposed rule is adopted in final form. There were approximately 13,000 firms in the construction industries with between \$3.5 and \$6.0 million in annual sales according to a special tabulation prepared by the Census Bureau for the SBA using 1990 data. These 13,000 firms accounted for approximately \$51 billion in sales (10 percent of total construction receipts).

They would become eligible for SBA's surety bond assistance provided they meet the other program requirements.

While an estimated 13,000 firms would be newly eligible as a result of this rule, the number of additional firms actually receiving assistance will be much fewer. The SBA estimates that 119 additional firms would receive assistance in an average year. This estimate is based on the fact that less than one percent (4,532 in FY 1991) of the 503,000 construction firms that are currently eligible now receive SBA guaranteed surety bonds, and it also assumes that a similar percentage of the newly eligible firms in the \$3.5 million to \$6.0 million size range would receive SBA guaranteed surety bonds.

SBA bases its estimate of \$234 million in additional guarantees on its experience with those firms that in the past have received SBA guaranteed bonds. SBA has observed that these users have obtained SBA guarantees on

contract bonds representing approximately 61% of their gross revenue. Construction firms in the \$3.5 to \$6.0 million sales range generate nearly \$51 billion in annual sales, or an average of \$3.9 million per firm (\$51 billion ÷ 13,000 firms). One hundred and nineteen of those newly eligible construction firms (less than 1%) are projected to utilize the SBA Surety Bond Guarantee Program. These firms collectively generate \$467 million in sales. However, since approximately 61% of participating firms' sales are guaranteed under SBA's Surety Bond Program, roughly \$285 million in additional SBA guaranteed contract surety bonding would be covered, or about \$234 million in additional government commitments (see Table, below).

Construction firms in \$3.5-\$6.0 million range			Total receipts of firms receiving bonds	Total value of bonding affected by the guarantee	Total government exposure
(a) Total	(b) Total to receive SBA surety guarantees (a) × 0.91%	(c) Average receipts per firm	(d) (b) × (c)	(e) (d) × 61%	(f) (e) × 82%
13,000 .....	119 firms .....	\$3.9 million .....	\$466.8 million .....	\$284.8 million .....	\$233.5 million.

The proposed standard, however, would not impose a regulatory burden on these newly eligible firms because it does not regulate or control behavior.

**(2) Description of Potential Benefits of the Rule**

The benefits of this proposed rule are not easily quantifiable. However, the resulting additional competition from contracting firms that are newly eligible to bid on and perform contracts under the proposed size standard should result in lower costs to the Federal Government and to other public and private contracting bodies for construction and service contracts. Since 1971, through and including fiscal year 1992, it is estimated that the Surety Bond Guarantee Program has saved the public sector over \$1.2 billion. The savings is the computation between the lowest bid coming from the SBG participant and the next higher bidder. The premise is that the cost of the procurement has been reduced because the small contractor (i.e., the lowest bidder), would not have been awarded the job had the contractor not been a participant in the Surety Bond Guarantee Program. The savings to the public sector at the local, city, state and federal levels would also include amounts these entities would have had to pay for the higher bidder's surety bond protection if the Surety Bond Guarantee program were not in

existence. Private sector savings are also believed to be significant, but not measurable.

**(3) Description of Potential Costs of the Rule**

This change in size standards as it impacts on Government should not add a major element of cost to the Government and, in fact, as described above in (2) may reduce the cost to a procuring Federal or other public agency as a result of additional competition for contracts. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors.

**(4) Description of the Potential Net Benefits From the Rule**

From the above discussion, SBA believes that, because the potential costs of this interim rule are minimal, the potential net benefits would approach fairly closely the potential benefits. By increasing the size standard to \$6.0 million, a number of businesses in the \$3.5 to \$6.0 million range that presently have difficulty obtaining surety bonding would not be eligible for SBA surety bond guarantee assistance. As a result,

competition will be similarly increased, and hence reduce the overall costs to both public and private procuring bodies.

**(5) Description of Reasons Why This Action Is Being Taken and Objectives of Rule**

SBA has provided above in the supplementary information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this proposal.

**(6) Legal Basis for the Proposed Rule**

The legal basis for this rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

**(7) Federal Rules**

There are no Federal rules that duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

**(8) Significant Alternatives to Proposed Rule**

The changes to the current size standard set forth in this rule attempt to establish the most appropriate definition of small businesses eligible for SBA's Surety Bond Guarantee Program. There are no significant alternatives to defining a small business



other than developing an alternative size standard.

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this proposed rule, if promulgated as final, will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

#### List of Subjects in 13 CFR Part 121

Government procurement,  
Government property, Grant Programs—  
business, Loan programs—business,  
Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

#### PART 121—[AMENDED]

(1) The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(2) In § 121.802, Establishment of the size standard, paragraph (a)(3) is proposed to be revised to read as follows:

#### § 121.802 Establishment of the size standard.

\* \* \* \* \*

(a)(3) For purposes of surety bond guarantee assistance, (i) Any construction (general or special trade) concern is small if its annual receipts average for its preceding three completed fiscal years does not exceed \$6.0 million.

(ii) Any concern performing a contract for services (including, but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three completed fiscal years does not exceed \$6.0 million.

(iii) For other surety bond guarantee assistance, an applicant must meet the size standard set forth in § 121.601 for the primary industry (as defined in § 121.802(b)) in which the applicant, including its affiliates is engaged.

\* \* \* \* \*

Dated: July 6, 1993.

**Erskine Bowles,**  
Administrator, U.S. Small Business  
Administration.

[FR Doc. 93-20837 Filed 8-26-93; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 774, 778, and 843

RIN 1029-AB62

#### Definition and Procedures for Transfer, Assignment and Sale of Permit Rights; Definition of Ownership and Control; Permit Information Requirements and the Applicant/Violator System; Civil Penalties for Owners and Controllers of Violators

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule, extension of public comment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until September 27, 1993, the public comment period on the proposed rule published in the June 28, 1993 *Federal Register* (58 FR 34652). This will provide more time in which to comment on the proposed rule.

**DATES:** Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on September 27, 1993.

**ADDRESSES:** Written Comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-208-6652.

**SUPPLEMENTARY INFORMATION:** OSM published a proposed rule on June 28, 1993 (58 FR 34652), that would amend its regulations and amend existing provisions to clarify the role of the AVS in the permit application process; reorganize and amend the definitions of ownership and control; amend the definition of and procedures for transfer, assignment, or sale of permit rights; establish procedures for permit revisions regarding changes in operators or other changes in ownership or control; revise requirements for information to be submitted as part of the permit application process; eliminate certain civil penalties for

owners and controllers of violators; and establish penalties for knowing submission of false or incomplete ownership or control information during any of the above or several other information collection processes.

The comment period for the proposed rule was scheduled to close on August 27, 1993. However, an extension was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on September 27, 1993.

Dated: August 23, 1993.

**Brent Wahlquist,**

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93-20778 Filed 8-26-93; 8:45 am]

BILLING CODE 4310-05-M

#### 30 CFR Part 926

### Montana Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing the receipt of a proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment contains statutory changes adopted by the Montana 1993 Legislature that address ownership and control provisions, violation history updates, notices of intent for prospecting, consent to surface mining by surface owner, and editorial changes.

This document sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4 p.m., m.d.t. September 27, 1993. If requested, a public hearing on the proposed amendment will be held on September 21, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 13, 1993.



**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office. Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street; room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Gary Amestoy, Administrator, Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444-2074.

**FOR FURTHER INFORMATION CONTACT:** Guy V. Padgett, Telephone (307) 261-5776.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980 *Federal Register* (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

#### II. Proposed Amendment

By letters dated June 16 and July 18, 1993, (Administrative Record No. MT-11-01) Montana submitted a proposed amendment to its permanent program pursuant to SMCRA. The Montana proposed amendment reflects the statutory changes adopted by the Montana 1993 Legislature. These changes fall into four categories: (1) Prospecting under notices of intent; (2) Ownership and control provisions and revision of provisions specifying which permitting actions are subject to violation history review; (3) Repeal of a section of the Montana Act relating to surface owner consent; and (4) non-substantive editorial changes.

##### 1. Prospecting

Montana proposes to add a new subsection (8) to Montana Code Annotated (MCA) Section 82-4-226.

The new subsection would provide for the conduct of prospecting under a notice of intent, instead of under a prospecting permit, when not conducted in an area designated unsuitable for coal mining and not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit. In some such cases, compliance with coal prospecting performance standards would be required. The new subsection would also provide for the Department (of State Lands) to inspect such operations.

Revision would also be made to subsection (1) of MCA 82-4-226 to reference the new subsection.

##### 2. Ownership and control provisions

Montana proposes to revise subsections (11) and (12) of MCA 82-4-227 to require permit denial for certain violations by any person who owns or controls the applicant; denial would also be required for permit amendments other than incidental boundary revisions. The proposal would further require denial of permit amendments (other than incidental boundary revisions) for patterns of willful violations.

##### 3. Surface owner consent

Montana proposes to repeal MCA 82-4-224. That section requires that in instances where the owners of the mineral and surface estates are not the same, an application for a surface mining permit must include a written consent (or a waiver) by the surface owner for entrance and commencement of strip-mining operations (except when the mineral estate is federally-owned).

##### 4. Editorial Changes

Montana proposes editorial revisions throughout MCA Sections 82-4-203, 82-4-226, and 82-4-227. The State presents such changes as non-substantive.

#### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

##### Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time

indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

##### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. September 13, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

##### Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

#### IV. Procedural Determinations

##### Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.



**Executive Order 12778**

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

**National Environmental Policy Act**

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

**Paperwork Reduction Act**

This rule does not contain information collection requirements that required approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

**Regulatory Flexibility Act**

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1993.

Raymond L. Lewrie,  
Assistant Director, Western Support Center.  
[FR Doc. 93-20823 Filed 8-26-93; 8:45 am]  
BILLING CODE 4310-05-M

**30 CFR Part 944****Utah Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Utah rules pertaining to the scope of rulemaking and promulgation of rules, petitions to initiate rulemaking, hearing requirements for designating areas unsuitable for coal mining, confidentiality of coal exploration information, permit application requirements pertaining to blasting and hydrology, and mining in special areas, specifically prime farmland and alluvial valley floors. The amendment is intended to incorporate the additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4 p.m., m.d.t. on September 27, 1993. If requested, a public hearing on the proposed amendment will be held on September 21, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 13, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this

notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486  
Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180-1203, Telephone: (801) 538-5340

**FOR FURTHER INFORMATION CONTACT:** Robert H. Hagen, Telephone: (505) 766-1486.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Utah Program
- II. Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Utah Program**

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, *Federal Register* (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

**II. Proposed Amendment**

By letter dated August 2, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT-851). Utah submitted the proposed amendment at its own initiative. Utah proposes revisions to the Utah Rules of Practice and Procedure of the Board of Oil, Gas and Mining (Board) at Utah Administrative Rules (Utah Admin. R.) 641-112-100, scope of rulemaking, and 641-112-200, promulgation of rules. Utah also proposes revisions to the Utah Coal Mining Rules at Utah Admin. R. 645-100-500, petitions to initiate rulemaking; 645-103-441, hearing requirements for designating areas unsuitable for coal mining and reclamation operations; 645-203-200, confidentiality of coal exploration information; 645-301-524.661, permit application blasting level chart; 645-301-731.760, permit application cross sections and maps showing hydrologic information; and 645-302-314.110 and 645-302-323.310, special areas of



mining, specifically prime farmland and alluvial valley floors.

Utah proposes to delete the scope of rulemaking provision at Utah Admin. R. 641-112-100 that requires the Board to promulgate such procedural and substantive rules it deems useful or necessary to implement the statutory duties, fulfill its statutory obligations, or interpret the statutory authority under which it operates. At Utah Admin. R. 641-112-200, Utah proposes to revise the procedures for promulgation of rules to provide that the Board will promulgate rules under the authority provided at Utah Code Annotated (U.C.A.) Sections 40-6-5, 40-9-3.5(2), and 40-10-6(1). At Utah Admin. R. 645-100-500, Utah proposes that persons other than the Division of Oil, Gas and Mining (Division) or the Board may petition to initiate rulemaking pursuant to Utah Admin. R. 641 and the Utah Administrative Rulemaking Act, U.C.A. 63-46-8. At Utah Admin. R. 645-103-441, Utah proposes that within 10 months after receipt of a complete petition to designate an area unsuitable for coal mining, the Board shall hold a public hearing in the locality of the area covered by the petition unless the petitioners and intervenors agree. At Utah Admin. R. 645-203-200, Utah proposes to revise its exploration confidentiality provision to require that the Division will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is classified as being protected, private, or controlled under the Government Records Access and Management Act or confidential under other applicable State or Federal laws, rules, or regulations. At Utah Admin. R. 645-301-524.661, Utah proposes to delete the reference to U.C.A. 63-46a-(3)(7)(a) and reference only Figure 1 which shows the maximum allowable ground particle velocity for blasting operations. At Utah Admin. R. 645-301-731.760, Utah proposes to add to its hydrology permit application requirements that the Division may, depending on the structures and facilities located in the permit area, require other relevant cross sections and maps. At Utah Admin. R. 645-302-314.110, Utah proposes to revise its prime farmland application permit content requirements to indicate that U.S. Department of Agriculture Soils Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are incorporated on the effective date, rather than the date of adoption, of Utah Admin. R. 645; Utah also proposes to delete the statement that notices of

changes made to these publications will be periodically published in the **Federal Register**. At Utah Admin. R. 645-302-323.310, Utah proposes to revise its alluvial valley floor water quality requirement by adding language that incorporates by reference the specific publication by Maas and Hoffman, "Crop Salt Tolerance—Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops."

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

#### 1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

#### 2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on September 13, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

#### 3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public

hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

### IV. Procedural Determinations

#### 1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

#### 2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

#### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).



#### 4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### 5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.  
[FR Doc. 93-20822 Filed 8-26-93; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[FRL-4699-2]

#### State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed decision.

**SUMMARY:** On February 12, 1993, the Governor of Alaska submitted a petition requesting that the State of Alaska be considered for certain exemptions from the diesel fuel sulfur requirements of section 211(i) of the Clean Air Act, as amended (Act). Alaska is not requesting an exemption from the minimum cetane requirement for motor vehicle diesel fuel as set forth in section 211(i) of the Act.

The Administrator of the Environmental Protection Agency (EPA) proposes in this document to grant the

petition for exemption as requested by the Governor of Alaska. The exemptions would be based on the finding that it is unreasonable to require persons in Alaska who are located in remote communities not served by the Federal Aid Highway System, and, at this time, for persons served by the Federal Aid Highway System in Alaska, to comply with the sulfur requirement of section 211(i) of the Act and EPA's motor vehicle diesel fuel regulations due to Alaska's unique geographical, meteorological and economic factors, as well as significant local factors.

**DATES:** A hearing will be held in Washington, DC, on this petition if one is requested on or before September 13, 1993. If no hearing is held, comments on this Notice of Proposed Decision must be submitted on or before September 27, 1993. If a hearing is held, comments must be submitted on or before 30 days from the date of the hearing and EPA will publish an announcement of a public hearing in the *Federal Register*. For more information on public participation see **SUPPLEMENTARY INFORMATION: IV. Public Participation.**

**ADDRESSES:** Copies of information relevant to this petition are available for inspection in public docket A-93-14 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 260-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A duplicate public docket, AK1-1993-1, has been established at U.S. EPA Region X, 1200 Sixth Avenue (AT-082), Seattle, WA 98101, (206) 553-0180, and is available between the hours of 8 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m. Monday through Friday.

Any comments (in duplicate if possible) from interested parties should be addressed to both dockets with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Ms. Whitney Trulove-Cranor, Environmental Protection Specialist, Plans and Program Section, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233-9036.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply,

offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) provides that the States of Alaska and Hawaii may seek exemption from the requirements of this subsection in the same manner as provided in section 325<sup>1</sup> of the Act, and requires the Administrator to take final action on any petition filed under this section, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including section 211(i). Such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

##### II. Petition for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, Governor of the State of Alaska, submitted a petition to exempt motor vehicle diesel fuel in Alaska from all of the requirements of section 211(i) except the minimum cetane index requirement of 40. The petition requests a short-term exemption for areas accessible by the Federal Aid Highway System ("on-highway") and a permanent exemption for areas not accessible by the Federal Aid Highway System ("off-highway"). The short-term exemption would exempt motor vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the Federal Aid Highway System from meeting the sulfur content requirement

<sup>1</sup> Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law 101-549. Section 806 of the Amendments, which added paragraph 1 to section 211 of the Act, used 42 U.S.C. 7625-1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 28, 1990) (statement of Sen. Murkowski).



specified in section 211(i) until October 1, 1996. Those areas of Alaska not reachable by the Federal Aid Highway System would be permanently exempt from the sulfur content requirement of section 211(i). The petition is based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

If granted, the exemption would apply to all persons in Alaska subject to the prohibitions of section 211(i) of the Act and the diesel fuel requirements in 40 CFR Part 80. Persons in communities served by the Federal Aid Highway System would be exempt from compliance with the diesel fuel sulfur content requirement until October 1, 1996. Persons in communities who are not served by the Federal Aid Highway System (i.e., they are served by barge lines) would be permanently exempt from compliance with the diesel fuel sulfur content requirement. The exemption would apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in the State of Alaska, motor vehicle diesel fuel. Alaska is not requesting an exemption from the minimum cetane requirement for motor vehicle diesel fuel.

The following discussion summarizes the contents of the petition.

#### A. Geography and Location of the State of Alaska

At 586,000 square miles in area, Alaska is about one-fifth as large as the combined area of the lower 48 states. Because of its extreme northern location, rugged terrain and sparse population, no other state relies on barges to deliver petroleum products to the extent Alaska does. Only 35% of Alaska's communities are served by the Federal Aid Highway System which is a combination of road and marine highways. These on-highway communities account for 69% of the total State population. The remaining 65% of Alaska's communities are served by barge lines and are referred to as off-highway or "remote" communities. Although barge lines can directly access some off-highway communities, those communities that are not located on a navigable river are served by a two-stage delivery system: Over water by barge line and then over land to reach the community. Off-highway communities with populations over 100 account for 13% of the total State population. The remaining 18% of the population consists of off-highway communities with populations less than 100 persons. In 1990, the State's total population was only 550,043.

Because of the State's high latitude, it experiences seasonal extremes in the amount of daily sunlight, which in turn affects the cost of construction in Alaska. For example, the city of Anchorage, located at 61° latitude, receives approximately 19 hours of sunlight on a summer day, and approximately 5.5 hours of sunlight on a winter day; whereas, the community of Point Barrow, located at 71° latitude, receives approximately 24 hours of sunlight on a summer day, and approximately zero hours of sunlight on a winter day. Alaska's petition states that this limitation on the amount of winter-time daylight is one reason why construction costs in the State are high compared to the lower 48 states.

According to the petition, Alaska's extreme northern location places it in a unique position to fuel transcontinental cargo flights between Europe, Asia, and North America. Roughly 75% of all air transit freight between Europe and Asia lands in Anchorage, as does that between Asia and the United States. The result is a large market for jet-A fuel produced by local refiners, which decreases the importance of highway diesel fuel to these refiners. Based on State tax revenue receipts and estimates by Alaska's refiners, diesel fuel consumption for highway use represents roughly 5% of total distillate fuel consumption.

#### B. Climate, Meteorology and Air Quality

Alaska's climate is colder than that of the other 48 states. The extremely low temperatures experienced in Alaska during the winter impose a unique fuel composition requirement for diesel fuel in Alaska, known as a "cloud point" specification.<sup>2</sup> Although all highway diesel fuels, which are governed by the American Society of Testing and Materials (ASTM) product specifications, are required to meet a cloud point specification, the cloud point varies from one area to another since it is based on the tenth percentile minimum ambient temperature for the area in which the fuel will be used.<sup>3</sup> Alaska has the most severe cloud point specification for diesel fuel in the U.S. at -56 °F. For this reason, all diesel fuel used in the State of Alaska is produced by refiners located in Alaska. Jet-A kerosene meets the same cloud point

<sup>2</sup> The cloud point defines the temperature at which a cloud or haze of wax crystals appears in the oil. Its purpose is to ensure a minimum temperature above which fuel lines and other engine parts are not plugged by solids that form in the fuel.

<sup>3</sup> Annual Book of ASTM Standards, Designation D975-89 "Standard Specification for Diesel Fuel Oils," Current edition approved March 31, 1989.

specification as No. 1 diesel fuel (which is marketed primarily during the winter as opposed to No. 2 diesel fuel which is marketed primarily in the summer) and is commonly mixed with or used as a substitute for No. 1 diesel fuel. However, because jet-A kerosene is allowed a maximum sulfur content of 0.3%, the new diesel fuel sulfur requirement of 0.05% would prohibit using jet-A and No. 1 diesel fuel interchangeably.

Ice formation during the winter months restricts fuel delivery to off-highway areas served by barge lines. Therefore, fuel is generally only delivered to these areas between the months of May and October. This further restricts the ability of fuel distributors in Alaska to supply multiple grades of petroleum products to off-highway communities.

The only violations of ambient air quality standards in Alaska are for carbon monoxide (CO) and particulate matter (PM<sub>10</sub>). CO violations have only been recorded in the State's two largest communities: Anchorage and Fairbanks. PM<sub>10</sub> violations have only been recorded in two rural communities, Mendenhall Valley of Juneau and Eagle River, a community within the boundaries of Anchorage. The most recent PM<sub>10</sub> inventories for these two communities show that these violations are the result of fugitive dust from paved and unpaved roads, and that motor vehicle exhaust is responsible for less than one percent of the overall PM<sub>10</sub> being emitted within the borders of each of these areas.<sup>4</sup> Moreover, Eagle River has not had a violation of the PM<sub>10</sub> standard since 1986 and plans to apply for a change in its attainment status. Mendenhall Valley has plans for extensive road paving to be implemented to control road dust. The sulfur content of diesel fuel is not expected to have any significant impact on ambient PM<sub>10</sub> or CO levels in any of these areas because of the minimal contribution by motor vehicles to PM<sub>10</sub> in these areas and the fact that diesel fuel sulfur content has an insignificant effect on CO emissions.

#### C. Economic Factors

Alaska states in its petition that local refineries have limited refining capabilities. Demand for jet-A kerosene, which is sold as No. 1 diesel fuel because it meets Alaska's winter cloud point specification, accounts for almost fifty percent (50%) of distillate

<sup>4</sup> "PM<sub>10</sub> Emission Inventories for the Mendenhall Valley and Eagle River Areas," prepared for the U.S. Environmental Protection Agency, Region X by Engineering-Science, February 1988.



consumption and dominates refiner planning. A survey of the refiners in Alaska, conducted by the State, revealed that it would cost over \$100,000,000 in construction and process modifications to refine Alaska North Slope (ANS) crude into 0.05% sulfur diesel fuel to meet the demand for highway diesel fuel. Among the reasons for the high cost include the construction costs in Alaska, which range from 25% to 65% higher than costs in the lower 48 states, and the cost of modifying the fuel production process itself. The petition states that because there is such a small demand for highway diesel fuel in Alaska, the costs that would be incurred to comply with section 211(i)'s sulfur requirement are excessive; and without an exemption from having to meet this requirement, most refiners would choose to exit the market for highway diesel fuel. Although one refiner has discovered a low-cost approach to producing 0.05% sulfur diesel fuel, information provided to EPA subsequent to the receipt of this petition revealed that this fuel is a custom Arctic Heating Fuel that has its own unique specifications and does not meet all ASTM standards for highway diesel fuels such as No. 1 and No. 2 diesel. Therefore, this low-sulfur diesel fuel would not be marketed for commercial use, but only for internal use in fleet vehicles on the North Slope.<sup>5</sup>

Currently, barge shipments of diesel fuel to communities off the Federal Aid Highway System do not require segregation of diesel fuel used in motor vehicles from diesel fuel used for off-highway purposes. It would be costly to create separate storage facilities and tankage for transportation of low-sulfur highway diesel fuel to off-highway communities, where motor vehicle diesel fuel consumption represents less than 5% of total distillate consumption. Since the majority of diesel fuel consumption in these communities is for off-highway purposes (generation of electricity, heat, non-road vehicles) the cost associated with converting the entire diesel fuel supply to low-sulfur diesel would be prohibitive, increasing the overall cost of living in these communities. Currently, it is not uncommon for the cost of electricity to exceed 50 cents/kwh in off-highway communities, as opposed to the cost of electricity for on-highway communities,

which ranges from 6.6 cents/kwh to 11.25 cents/kwh. In comparison, the national average cost of electricity in 1992 was 6.8 cents/kwh for all sources (i.e., residential, commercial, industrial, and other).<sup>6</sup>

The Alaska Department of Environmental Conservation (ADEC) has estimated that refiners would have to charge an additional 28 to 46 cents per gallon of highway diesel fuel to recover the cost of the investment to produce low-sulfur diesel fuel, compared to an estimated 3 to 5 cents per gallon increase for the lower 48 states. Currently, the price of diesel fuel marketed on the Federal Aid Highway System in Alaska ranges from \$1.09 to \$1.21 per gallon. Prices of diesel fuel in off-highway communities currently range from \$1.45 to \$2.65 per gallon.

#### D. Environmental Factors

Information provided to EPA by the State of Alaska subsequent to receipt of the petition indicates that the current sulfur content for diesel fuel in Alaska averages approximately 0.1% by weight for nine months of the year, and 0.25% by weight for the remaining three months of the year. Thus, the current level of sulfur in motor vehicle diesel fuel used in Alaska is well below the current ASTM sulfur specification of 0.5% (by weight).<sup>7</sup>

### III. Proposed Decision

Presently, refiners in the State of Alaska are the only source of highway diesel fuels meeting the arctic cloud point specification. Such fuels are not currently available in the lower 48 states. Given the petroleum refining, storage and distribution infrastructure in the State of Alaska, in-state refiners and residents of off-highway communities would be most affected if required to comply with the section 211(i) diesel fuel sulfur content requirement.

In complying with the section 211(i) sulfur requirement, refiners have the option to invest in the process modifications necessary to produce low-sulfur diesel fuel for use in motor vehicles, or not invest in the process modifications and only supply diesel fuel for off-highway purposes (e.g., heating, generation of electricity, fuel for non-road vehicles). Most of Alaska's refiners indicated that given the minuscule size of the highway diesel fuel market in Alaska, they could not justify the investments required to

produce low-sulfur diesel fuel and would choose to exit the market for highway diesel fuel if this exemption is not granted. Although one refiner appears to have discovered a low-cost approach to producing a diesel fuel that meets the section 211(i) sulfur requirement, this fuel does not meet ASTM viscosity specifications for No. 1 diesel. Another limitation to this approach is that the process modifications involved in producing low-sulfur diesel fuel would result in a substantial decrease in yield. The refiner has indicated to EPA that even if it could produce a commercial grade low-sulfur diesel fuel, it would primarily be for internal use only, as the refiner does not have the capacity to supply Alaska's highway diesel fuel market. In addition, the cost and logistics of distribution to areas on the highway system would also be prohibitive due to the location of the refineries.<sup>8</sup>

It is proposed that areas in Alaska served by the Federal Aid Highway System and marine highway system be granted a three year exemption (until October 1, 1996) from having to meet the diesel fuel sulfur content requirement of 0.05% (by weight), as per section 211(i) of the Act.<sup>9</sup> The basis for this decision is that compliance with this requirement would, at this time, create a severe economic burden for refiners, distributors and consumers of diesel fuel in the State of Alaska. This economic burden is created by unique meteorological conditions in Alaska and unique distillate product demands as outlined above. As a result of these conditions, low-sulfur diesel fuel will not be available for commercial use in Alaska by October 1, 1993, when the section 211(i) requirement goes into effect.

The EPA believes that a three year exemption from the diesel fuel sulfur content requirement is a reasonable time period for areas served by the Federal Aid Highway System. During the exemption period, the State of Alaska plans to establish a Task Force (in which an EPA representative will participate) to evaluate further the availability of arctic-grade, low-sulfur diesel fuel from out-of-state refiners, the costs associated with importing the fuel, and the costs of storing and distributing

<sup>5</sup> Letter from Robert G. Kratsas, Manager, Environment, Health and Safety, ARCO Alaska, Inc. to Commissioner John A. Sandor of the Alaska Department of Environmental Conservation (DEC), March 10, 1992, and letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc. to Ronald G. King of the Alaska DEC, April 9, 1993.

<sup>6</sup> "Monthly Energy Review," Energy Information Administration, U.S. Department of Energy, March 1993.

<sup>7</sup> American Society for Testing and Materials Standard D975.

<sup>8</sup> Letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc., to Ronald G. King of the Alaska DEC, April 9, 1993.

<sup>9</sup> EPA will consider a community to be "on-highway" if it can be reached by an on-road vehicle from the contiguous road system or by barge on the marine highway system. All other communities not accessible by the contiguous road or marine highway system will be considered "off-highway."



the fuel to areas on the highway system. If the Task Force's evaluation provides adequate proof that it is not economically feasible to produce or import an arctic-grade diesel fuel that meets the 0.05% sulfur requirement, and that it would not be feasible for EPA to impose an intermediate sulfur content standard for motor vehicle diesel fuel used in areas served by the highway system, and no other alternatives are discovered, the State will have adequate time to prepare and submit another exemption request. If a new exemption request is submitted, EPA will publish another notice in the Federal Register and re-examine the issue of an exemption.

Although the State's largest communities, Fairbanks and Anchorage, are carbon monoxide (CO) nonattainment areas, granting this exemption is not expected to have any significant impact on ambient CO levels because the sulfur content in diesel fuels does not significantly affect CO emissions. Two rural communities are designated nonattainment areas with respect to particulate matter (PM<sub>10</sub>); however, motor vehicle exhaust is responsible for less than one percent of the overall PM<sub>10</sub> being emitted within the borders of these two areas where fugitive dust is a problem. The EPA believes that granting a 3-year exemption to communities served by the highway system will not have any significant impact on the attainment prospects of any of these communities.

Whether low-sulfur diesel fuel is produced in Alaska or imported from the lower 48 states or Canada,<sup>10</sup> there remains the problem of segregating the two fuels for transport to communities located off the highway system and storage of the fuels thereafter. Fuel is delivered to these communities by barge lines and off-road transport only between the months of May and October due to ice formation which blocks waterways leading to these communities for much of the remainder of the year. The fuel supplied to these communities during the summer months must last through the winter and spring months until the ice has melted and resupply can occur. Additionally, the existing fuel storage facilities limit the number of fuel types that can be stored for use in these communities. The cost of constructing separate storage facilities

and providing separate tanks for transport of low-sulfur diesel fuel to remote communities is prohibitive. This is largely due to the high cost of construction in Alaska and the constraints inherent in distributing fuel to Alaska's remote communities as outlined above. One alternative to constructing separate storage facilities is to supply only low-sulfur diesel fuel to these communities. However, the result would require use of the higher cost, low-sulfur diesel fuel for all diesel fuel needs. This would greatly increase the already high cost of living in these communities since approximately 95% of distillate consumption in these communities is for off-highway uses, such as operating diesel powered electrical generators.

Given that highway diesel fuel consumption represents less than 5% of total distillate consumption in these remote communities, that many villages have a total of only one or two vehicles, and that these remote communities are currently in attainment with all air quality standards, EPA believes that the cost of using low-sulfur diesel fuel in these communities far outweighs the benefits. Because the Agency believes that requiring these remote communities to comply with the section 211(i) sulfur requirement would create a severe economic burden on distributors of diesel fuel to these communities and the residents of these communities themselves, and because the Agency believes the unique conditions faced by these remote communities are not likely to change in the future, the Agency proposes that communities that are not served by the contiguous road or marine highway system be permanently exempted from the 0.05% (by weight) sulfur requirement of section 211(i) of the Act.

For the same reasons, the Agency also proposes to exempt Alaska from those provisions of section 211(g)(2) of the Act that prohibit the fueling of motor vehicles with high-sulfur diesel fuel.<sup>11</sup> Although Alaska did not explicitly request an exemption from this provision in its petition, it is reasonable to read the petition as including such a

<sup>11</sup> This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05%, when such fuel is permitted to be sold or dispensed for use in motor vehicles. The proposed exemptions would include exemptions from this prohibition, but not include the prohibitions in section 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

request. Sections 211(g) and 211(i) both restrict the use of high-sulfur motor vehicle diesel fuel, and exempting Alaska from section 211(i)'s sulfur content requirement but not from section 211(g)'s related prohibition would provide no relief from the problems Alaska presented in their petition. Therefore, it is proposed that areas in Alaska served by the Federal Aid Highway System be exempted from the related 211(g)(2) provisions until October 1, 1996, and that off-highway areas, served by barge lines, be permanently exempted from these related provisions.

Finally, EPA recognizes that the primary purpose of reducing the sulfur content of diesel fuel is to reduce vehicle particulate emissions. Additional benefits cited in the final rule (55 FR 34120, August 21, 1990) include a reduction in sulfur dioxide (SO<sub>2</sub>) emissions and the ability to use exhaust after treatment devices on diesel fueled vehicles, which would result in some reduction of HC and CO exhaust emissions. Despite the possibility that the use of high-sulfur diesel fuel may cause plugging or increased particulate sulfate emissions in diesel vehicles equipped with trap systems or oxidation catalysts, any increase in sulfate particulate emissions would likely be insignificant in Alaska since current motor vehicle contributions to PM<sub>10</sub> emissions are minimal, as previously discussed in part B. Also, the lower sulfur requirement for motor vehicle diesel fuel will have no impact on the attainment prospects of Fairbanks and Anchorage with respect to CO, since reducing sulfur content has no direct effect on CO emissions. Since Alaska is currently in attainment with HC and SO<sub>2</sub> air quality standards, there is currently no concern for reducing HC or SO<sub>2</sub> emissions. Additionally, the extent to which exhaust after treatment devices will be used on diesel vehicles, and the extent to which plugging or other damage would occur to these devices as a result of using high-sulfur diesel fuel, is relatively uncertain at this time. Given the limited number of vehicles that may be affected, EPA plans to handle warranty and recall liability issues on a case-by-case basis.

The Agency recognizes that granting these exemptions means Alaska will forego the potential benefits to its air quality resulting from the use of low-sulfur diesel fuel. The Agency believes that the potential benefits to Alaska's air quality are minimal and far outweighed by the increased costs to remote communities, and at this time, to communities served by the highway

<sup>10</sup> Although low-sulfur diesel fuel is not currently available in Canada, Environment Canada is working with diesel fuel refiners in Canada and manufacturers of diesel vehicles to create Memoranda of Understanding, whereby 0.05% sulfur diesel fuel, which also meets the cetane index requirement of 40, is expected to be available in some parts of Canada by October 1, 1994.



system. For this reason, EPA proposes to grant the requested exemptions.

#### IV. Public Participation

EPA will consider this petition in accordance with section 307(d) of the Act. To aid in preparing EPA's final response to the petition, EPA hereby invites public comment on the proposed decision to grant the petition for exemption as requested.

Parties who wish to request a hearing should contact Ms. Whitney Trulove-Cranor at (202) 233-9036. If a hearing is scheduled based on a request and you wish to be notified or to participate, you must contact the above individual for the date, time and location of the hearing. If there is a hearing, parties wishing to testify should contact Ms. Whitney Trulove-Cranor. It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the EPA Air Docket in Washington, DC, and the Region X docket in Seattle, WA. Additional information on the submission of comments to both dockets may be found in the ADDRESSES section of this notice.

#### V. Statutory Authority

Authority for the action proposed in this notice is in sections 211(i)(4) (42 U.S.C. 7545(i)(4)) and 325(a)(1) (42 U.S.C. 7625-1(a)(1)) of the Clean Air Act, as amended.

#### VI. Administrative Designation and Regulatory Analysis

Under Executive Order (E.O.) 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The decision proposed today alleviates any potential adverse economic impacts in Alaska and is not a regulation or rule as defined in E.O. 12291. Therefore, no regulatory impact analysis has been prepared.

#### VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. Today's proposed decision is not a rulemaking. Furthermore, the action eases requirements otherwise applicable to affected entities. Thus, it will not result in a significant adverse impact on a

substantial number of small business entities.

#### VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: August 23, 1993.

Carol M. Browner,  
Administrator.

[FR Doc. 93-20855 Filed 8-26-93; 8:45 am]

BILLING CODE 6560-50-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 93-177, DA 93-1024]

#### AM Radio Service Directional Antenna Performance

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

**SUMMARY:** The Commission extends the time for filing comments in its proceeding examining the policies and rules pertaining to the performance verification of directional antenna systems at AM Broadcast Radio Service stations from August 20, 1993 to October 29, 1993 and for reply comments from September 7, 1993 to December 29, 1993. The Notice of Inquiry in this proceeding may be found at 58 FR 36184 (July 6, 1993). This action is being taken to allow parties knowledgeable in this area an adequate opportunity to base comments on a careful analysis of the issues.

**DATES:** Comments are now due October 29, 1993; reply comments are due December 29, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Joe Johnson, Mass Media Bureau (202) 632-9660.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Order Granting \*COM001\* Extension of Time

Adopted: August 19, 1993.

Released: August 20, 1993.

Comment Date: October 29, 1993.

Reply Comment Date: December 29, 1993.

By the Chief, Mass Media Bureau:

1. On June 14, 1993, the Commission adopted a Notice of Inquiry, 8 FCC Rcd 4345 (1993), ("NOI") in MM Docket No. 93-177 to examine the policies and rules pertaining to the performance verification of directional antenna systems at AM Broadcast Radio Service stations. Since those rules were established in the late 1930s, they have been amended many times, but the entire framework has never been comprehensively reexamined. The NOI initiates that broad review and seeks to identify those portions of the current rules affecting AM directional arrays which ought to be the subject of a Notice of Proposed Rule Making. The deadlines for filing comments and reply comments were, respectively, August 20, 1993 and September 7, 1993.

2. On July 12, 1993, the Association of Federal Communications Consulting Engineers ("AFCCE") requested an extension of the comment period. AFCCE is an association of consulting engineers, engineers employed by broadcast stations, networks and equipment manufacturers. AFCCE indicates that it will not be meeting during the summer and therefore will be unable to file comments on the established deadline. Thus, they request that the filing deadlines be extended by approximately 60 days.

3. Five consulting engineering firms that are members of AFCCE filed the petition that initiated this proceeding. The continued participation of those firms, of other AFCCE members, and of AFCCE as an organization should provide valuable assistance in our effort to update our AM directional antenna rules. We agree that it is important that the parties knowledgeable in this area have an adequate opportunity to base comments on a careful analysis of the issues. Therefore, we are persuaded that the extension now under consideration should be approved.

4. Accordingly, it is ordered that the request to extend the comment date filed July 12, 1993 by the Association of Federal Communications Consulting Engineers is granted. The date for filing comments in this proceeding is extended to October 29, 1993 and the date for filing reply comments is extended to December 29, 1993.

5. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

6. Further information may be obtained from Joe Johnson, Mass Media Bureau, Engineering Policy Branch, (202) 632-9660.



Federal Communications Commission.  
**Roderick K. Porter,**  
*Deputy Chief, Mass Media Bureau.*  
 [FR Doc. 93-20780 Filed 8-26-93; 8:45 am]  
 BILLING CODE 6712-01-M

#### 47 CFR Part 76

[MM Docket No. 93-232; DA 93-991]

#### Cable Television Service; List of Major Television Markets

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission invites comments on its proposal, initiated by a request filed by First Century Broadcasting, Inc. ("First Century"), to amend the Commission's Rules to change the designation of the San Francisco-Oakland-San Jose, California television market to include the community of Concord, California. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

**DATES:** Comments are due on or before September 22, 1993, and reply comments are due on or before October 7, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-232, adopted August 11, 1993, and released August 19, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

#### Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by First Century Broadcasting, Inc., licensee of KFCB-TV, Concord, California, proposed to amend § 76.51 of the Rules to change the designation of the San Francisco-Oakland-San Jose, California television market to include the community of Concord, California.

2. In evaluating past requests for hyphenation of a market, the

Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that KFCB-TV and stations licensed to communities in the San Francisco-Oakland-San Jose television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, First Century's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

#### Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

#### Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

#### Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 22, 1993, and reply comments on or before October 7, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

#### List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Mass Media Bureau.*

[FR Doc. 93-20779 Filed 8-26-93; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### 49 CFR Part 571

#### Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking from Case Consulting Laboratories requesting NHTSA to



amend Federal Motor Vehicle Safety Standard No. 116, Motor vehicle brake fluids. Petitioner requested that NHTSA revise certain test procedures and specify a new compatibility brake fluid for DOT 3 and DOT 5.1 brake fluids. After careful review, NHTSA has determined that the petition has not shown that there is a safety need for the requested changes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Carter's telephone number is: (202) 366-5274.

#### SUPPLEMENTARY INFORMATION:

##### Background Information

This notice denies a petition for rulemaking from Mr. Leonard Mackowiack of Case Consulting Laboratories, Inc., requesting NHTSA to amend Federal Motor Vehicle Safety Standard No. 116 (Standard No. 116, 49 CFR 571.116). Standard No. 116 specifies requirements for the performance of DOT 3, DOT 4, DOT 5 and DOT 5.1 brake fluids. The purpose of the standard is to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated fluid.

##### The Petition

On July 7, 1992, Case Consulting Laboratories (Case) petitioned NHTSA to amend several requirements and test procedures in Standard No. 116, in order to address what Case described as "technical gaps" in the standard. Case's petition raised the following issues. Case believed that the "humidification" requirement (i.e., the wet equilibrium reflux boiling point requirement of S5.1.2, which measures the amount of water a brake fluid absorbs) is inappropriate for DOT 4, DOT 5 and DOT 5.1 fluids because the test was developed from test data of DOT 3 fluid. The petitioner suggested that the humidification test procedure "has to be validated and modified for use with" the DOT 4, 5, and 5.1 fluids.

The petitioner also suggested that NHTSA develop a chloride corrosion test. Case stated that data submitted by members of a Society of Automotive Engineers brake fluid committee indicated that chlorides are present in vehicles' brake fluid. Case believed that those chloride levels "in combination with water, in a closed system are a source for metal corrosion."

Finally, Case requested NHTSA to develop new compatibility materials for DOT 3 and 5.1 fluids. Compatibility materials are test materials used in Standard No. 116 to evaluate new brake fluids and brake hoses. Since there is no specific chemical formula for brake fluid, compatibility fluid is used to detect adverse chemical reactions when brake fluids from various manufacturers are mixed together.

##### Agency Response

NHTSA has decided to deny Case's petition because of a lack of a safety need for the requested changes. There is no evidence, either supplied by the petitioner or otherwise available to NHTSA, supporting Case's belief that the alleged deficiencies in Standard No. 116 exist. The information supplied by the petitioner discussed, from an engineering point of view, particular brake system problems that might possibly occur, but did not indicate the existence or magnitude of any real-world safety problem. Standard No. 116's humidification test has applied to DOT 4, DOT 5 and DOT 5.1 fluids since May 6, 1986. Since that date, no problems have arisen about applying the requirement to the fluids in question. Similarly, there is no showing of a safety need to adopt a chloride corrosion test. The agency does not have information showing a safety problem from brake system corrosion due to chloride and water in vehicle brake systems.

Case has not shown a need to develop additional compatibility fluids for DOT 3 and 5.1 fluids. The agency has proposed to replace the current DOT 3 compatibility fluid (RM-66-03) with a newly developed fluid (RM-66-04). 57 FR 49162, October 30, 1992. Case believes that the RM-66-04 fluid "is not a true blend of DOT 3 type fluids because of a DOT 4 type is part of its blend." Case is correct when it indicates that the new (RM-66-04) compatibility fluid is not a true blend of DOT 3 brake fluids. It was never intended to be a blend of DOT 3 brake fluids. The blending of brake fluids for use in compatibility fluid RM-66-04 is intended to represent a broader range of brake fluids that just those used in fluids meeting the requirements of DOT 3 brake fluids.

In addition, NHTSA sees no need for development of a separate compatibility fluid for DOT 5.1 brake fluid. The higher boiling point brake fluids which meet the requirements of DOT 5, but are not silicon based compounds, fall into

the classification covered by DOT 5.1. The brake fluids which fall into the DOT 5.1 category are borate ester based compounds which have been developed to be entirely compatible with the requirements of SAE J1703 and Standard No. 116. RM-66-04 compatibility fluid is such a brake fluid. Thus, RM-66-04 compatibility fluid, when issued, will be the fluid used to test DOT 5.1.

In its petition, Case also expressed concern about how water absorbed in brake fluid can affect braking performance by increasing the fluid's viscosity and by shrinking styrene and butadiene rubber (SBR) cups in wheel and master cylinders. The petitioner suggested that NHTSA evaluate the extent of any problems with viscosity and rubber cup shrinkage and take corrective actions.

This request does not meet the requirements in 49 CFR part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders, for rulemaking "petitions." The focus of the request was on conducting research to investigate alleged problems. There is no provision for petitioning the agency to undertake research or to evaluate the extent of an alleged safety problem, such as that possibly relating to brake fluid viscosity and SBR cup shrinkage. Thus, Case's request for such action is not properly a matter for a petition.

In any event, the agency would like to respond to Case's concern by emphasizing that NHTSA is not aware of safety problems warranting the type of evaluation of brake fluid viscosity and SBR cups at this time. Further, Case did not provide any safety data or other information supporting its belief in the need for such an evaluation. Case is asking that NHTSA expend agency time and resources on this area, but no safety increase or benefit can be foreseen. The agency has decided that safety would be better served if it were to devote its resources to the other areas of motor vehicle safety that need attention.

Based on the above, the agency has determined that there is not a reasonable possibility that the order requested in Case's petition would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.

Issued on August 23, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93-20809 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-59-M



## Notices

Federal Register

Vol. 58, No. 165

Friday, August 27, 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 COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 082393E]

#### Gulf of Mexico Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council's Reef Fish Advisory Panel (Panel) will meet on September 7-8, 1993, at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469-5000. The meeting will begin on September 7 at 1 p.m. and run until 5 p.m. and on September 8 from 8 a.m. until 3 p.m.

The Panel will review the Reef Fish Stock Assessment Panel Report and the Socioeconomic Assessment Panel Report; provide recommendations on Amberjack, Vermillion Snapper, Red Grouper, Red Snapper, Gray Triggerfish, Red Porgy, Gag, and other species; and discuss Red Snapper trip limits for 1994 and the proposed schedule for Amendment #8 to the Reef Fish Fishery Management Plan.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813-228-2815.

Dated: August 23, 1993.

David S. Crestin,

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

[FR Doc. 93-20879 Filed 8-26-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 082393F]

#### Gulf of Mexico Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council's Standing and Special Reef Fish Scientific and Statistical Committees (Committees) will meet on September 9-10, 1993, at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469-5000. The meeting will begin on September 9 at 10 a.m. and run until 5 p.m. and on September 10 from 8 a.m. until 12 noon.

The Committees will review the Reef Fish Stock Assessment Panel Report and the Socioeconomic Assessment Panel Report; provide recommendations on Amberjack, Vermillion Snapper, Red Grouper, Red Snapper, Gray Triggerfish, Red Porgy, Gag, and other species; and discuss Red Snapper trip limits for 1994 and the proposed schedule for Amendment #8 to the Reef Fish Fishery Management Plan.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813-228-2815.

Dated: August 23, 1993.

David S. Crestin,

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

[FR Doc. 93-20880 Filed 8-26-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 082393C]

#### Pacific Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory entities will hold a public meeting on September 12-17, 1993, at

the Columbia River Red Lion Inn, 1401 North Hayden Island Drive, Portland, OR. Except for the closed session noted below, the meetings are open to the public.

The Council will meet on September 14 at 8 a.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The Council's open session begins at 8:30 a.m. on September 14 to consider administrative and other matters, including the election of the chair and vice chair of the Council, Council budget and personnel matters, amendments to the Magnuson Fishery Conservation and Management Act and other legislation, environmental community representation on the advisory panel, Council operating procedures and work load priorities. The Council will also address the following salmon management and habitat issues on September 14.

The salmon agenda items are:

- (1) Sequence of events and status of the fisheries;
- (2) California sport fishery measures between September 30, 1993 and May 1, 1994;
- (3) Status of stock reviews for Klamath and Sacramento River fall chinook;
- (4) Review of hooking mortality estimate for ocean sport fisheries; and
- (5) Salmon plan Amendment #1.

The public may address the Council on fisheries issues unrelated to the agenda items on September 14 at 4 p.m. Public comments that pertain to action items on the agenda will be heard during the Council's deliberations on each issue.

The Council will reconvene on September 15 beginning at 8 a.m. to consider Pacific halibut issues as follows:

- (1) Review of stock assessment for Area 2A;
- (2) Review of by-catch estimate for Area 2A;
- (3) Catch sharing plan for 1994; and
- (4) Proposals to amend the catch sharing plan for 1995.

Also on that day, the Council will address individual quotas for the fixed gear sablefish fishery.

On September 15 at 8 p.m. there will be a public workshop on West Coast groundfish stock assessments.

On September 16 and 17, beginning at 8 a.m. on each day, the Council will



address groundfish management issues as follows:

- (1) Status of regulations implementing Council actions;
- (2) Status of fisheries and inseason adjustments;
- (3) Revisions to the definition of legal gear;
- (4) System for combining limited entry permits;
- (5) Incorporation of the Newport, CA, dory fleet into the limited access fishery;
- (6) Preliminary stock assessments, harvest levels and other specifications for 1994;
- (7) Open access/limited entry allocations and trip limits;
- (8) Pacific whiting allocation framework; and
- (9) Scoping for new management approaches.

#### Other Meetings

The Scientific and Statistical Committee (SSC) will meet on September 13 at 8 a.m. to address scientific issues on the Council agenda, and will reconvene on September 14 at 8 a.m.

The SSC Groundfish Subcommittee will meet on September 12 at 3 p.m. to address halibut stock assessment and bycatch. The SSC Salmon Subcommittee will meet on September 12 at 1 p.m. to review the salmon plan amendment and the sport hooking mortality study.

The Groundfish Advisory Subpanel will meet on September 13 at 1 p.m. to address groundfish management issues on the Council agenda, and will reconvene on September 14 and 15 at 8 a.m.

The Salmon Technical Team will meet on September 13 at 1 p.m. to discuss salmon issues on the Council agenda.

The Budget Committee will meet on September 13 at 1 p.m. to review the status of the fiscal year 1993 budget, the fiscal year 1994 budget request and personnel rules.

The Habitat Committee will meet on September 13 at 1 p.m. to consider activities affecting the habitat of fish stocks managed by the Council.

The Enforcement Consultants will meet on September 14 at 7 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above meetings will be available to the public after September 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: August 23, 1993.

**David S. Crestin,**

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

[FR Doc. 93-20877 Filed 8-26-93; 8:45 am]

**BILLING CODE 3510-22-P**

[I.D. 082393B]

#### South Atlantic Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a joint public meeting of its Law Enforcement Committee and Advisory Panel on September 8-9, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571-1000. The meeting will begin on September 8 at 1:30 p.m. and run until 5 p.m., and on September 9 from 8:30 a.m. until 12 p.m.

Topics tentatively scheduled for discussion include:

- (1) Funding of law enforcement under the Magnuson Fishery Conservation and Management Act;
- (2) Captain and mate licensing requirements under the Coast Guard Vessel Safety Act;
- (3) Agency reports of minimum size limit violations;
- (4) Status of proposed management for "live rock" by the South Atlantic Council; and
- (5) The transfer at-sea of Spanish mackerel from larger boats to smaller boats because of daily vessel limits imposed on the commercial fishery off Florida.

#### FOR FURTHER INFORMATION CONTACT:

Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571-4366.

Dated: August 23, 1993.

**David S. Crestin,**

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

[FR Doc. 93-20878 Filed 8-26-93; 8:45 am]

**BILLING CODE 3510-22-P**

#### Marine Mammals

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

**ACTION:** Modification of scientific research permit No. 665 (P77#32).

**SUMMARY:** Notice is hereby given that on August 20, 1993, Permit No. 665, issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on March 21, 1989 (54 FR 12471), was modified to extend its duration through December 31, 1994.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices.

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301) 713-2289; and Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4047 (310/980-4016).

**SUPPLEMENTARY INFORMATION:** The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. *et seq.*), and the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 20, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93-20863 Filed 8-26-93; 8:45 am]

**BILLING CODE 3510-22-M**

#### Marine Mammals

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

**ACTION:** Modification of scientific research permit No. 684 (P77#35).

**SUMMARY:** Notice is hereby given that on August 20, 1993, Permit No. 684, issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on October 16, 1989 (54 FR 43194), was modified to extend its duration through December 31, 1994.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713-2289); and Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4047 (310/980-4016).

**SUPPLEMENTARY INFORMATION:** The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. *et seq.*), and the provisions of §§ 216.33 (d) and (e) of the Regulations



**Governing the Taking and Importing of Marine Mammals (50 CFR part 216).**

Dated: August 20, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93-20864 Filed 8-26-93; 8:45 am]

BILLING CODE 3510-22-M

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Addition**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 27, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On July 16, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (58 FR 38364) of proposed addition to the Procurement List.

Comments were received from the current contractor for the services and a union representing the contractor's workers. The contractor questioned the ability of workers with severe disabilities to operate equipment safely and to meet the health and safety requirements of performing the services in an environment like the Soldiers' Home. The union objected to the loss of employment and benefits by its members who are currently employed at the Soldiers' Home.

Nonprofit agencies employing people with severe disabilities perform janitorial and custodial services, and related activities, in a wide variety of Government environments, including areas with health and safety requirements like those of the Soldiers' Home.

The nonprofit agency which will provide these services is currently performing janitorial and custodial services under the Committee's program in nine other locations in the Washington, DC area.

Nonprofit agency employees are currently undergoing the specialized

training which the Soldiers' Home requires of workers performing these services. The central nonprofit agency that represents most of the nonprofit agencies performing janitorial and custodial services under the Committee's program has verified that the nonprofit agency is fully capable of providing the services required at the Soldiers' Home. The Soldiers' Home declined an opportunity to make its own determination that the nonprofit agency is capable of performing the services. The Soldiers' Home has informed the Committee that it considers the nonprofit agency is capable of performing the services. For these reasons, the Committee has determined that the nonprofit agency is capable of performing the service at the Soldiers' Home.

The addition of this service to the Procurement List will provide employment for a substantial number of people with severe disabilities. Nationally, people with severe disabilities have a disability rate of over 65%, far above that of the workers who will be displaced at the Soldiers' Home. The Committee believes that the loss of employment for workers who can more easily get other jobs is outweighed by the creation of jobs for people with severe disabilities by the addition of this service to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial

U.S. Soldiers' and Airmen's Home  
3700 North Capitol Street, NW.  
Washington, DC

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**E.R. Alley, Jr.,**

*Deputy Executive Director.*

[FR Doc. 93-20885 Filed 08-26-93; 8:45 am]

BILLING CODE 6820-33-P

**Procurement List; Additions and Deletions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** September 27, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On May 28, June 18, 25, July 2 and 9, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 31016, 33622, 34425, 35916 and 36944) of proposed additions to and deletions from the Procurement List.

**Additions**

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:



1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to Procurement List:

#### Commodities

Folder, File

7530-00-707-8406

Handle, Extension, Aluminum

7920-00-926-5146

Squeegee, Floor-Cleaning

7920-00-530-5740

7920-00-965-4873

#### Services

Janitorial/Custodial

Douglas Station Post Office

904 Third Street

Douglas, Alaska

Janitorial/Custodial

Basewide

Homestead Air Force Base, Florida

Janitorial/Custodial

Marine Corps Air Station Commissary

Kaneohe Bay, Hawaii

Janitorial/Custodial

Illinois Waterway Visitor Center

Dee Bennett Road

Utica, Illinois

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

#### Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

#### Sweatshirt

8415-00-269-0403

8415-00-262-1534

8415-00-262-1535

8415-00-262-1536

#### Sweatpants

8415-00-268-8178

8415-00-268-8179

8415-00-268-8180

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93-20883 Filed 8-26-93; 8:45 am]

BILLING CODE 6820-33-P

#### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 27, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

#### Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Canvas Basket Insert

7240-02-000-8704

Nonprofit Agency: New Horizons of Oakland County, Inc. Bloomfield Hills, Michigan

#### Deletion

It is proposed to delete the following services from the Procurement List:

Grounds Maintenance

U.S. Naval Security Activity  
Skaggs Island  
Sonoma, California

Janitorial/Grounds Maintenance

USARF—Grant County Airport  
Moses Lake, Washington

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93-20884 Filed 08-26-93; 8:45 am]

BILLING CODE 6820-33-P

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### Delegation of Settlement Authority

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Department of Justice Civil Division Directive No. 1-93 and 10 U.S.C. 113(d), the Secretary of Defense has delegated to the Secretaries of the Army, Navy, and Air Force the authority to adjust, determine, compromise, and settle administrative claims involving their respective Military Departments under 28 U.S.C. 2672 (relating to the administrative settlement of federal tort claims), if the amount of the proposed settlement, compromise or award does not exceed \$200,000.



The delegation to the Secretary of the Army includes the authority to adjust, determine, compromise, and settle administrative claims arising out of the acts or omissions of civilian personnel of DoD Components other than the Military Departments, in accordance with DoD Directive 5515.9, "Settlement of Tort Claims," September 12, 1990.

The authority delegated above may be redelegated in writing.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia L. Toppings, Directives Division, Attn: room 2A286, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Dated: August 24, 1993.

**Patricia L. Toppings,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.  
[FR Doc. 93-20835 Filed 8-26-93; 8:45 am]  
BILLING CODE 5000-04-M

### Privacy Act of 1974; Notice to Amend Record Systems

**AGENCY:** Office of the Secretary of Defense, DOD

**ACTION:** Notice to amend record systems.

**SUMMARY:** The Office of the Secretary of Defense proposes to amend six systems of records notices to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** The amendments will be effective on September 27, 1993, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, Room 5C315, Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695-0970 or DSN 225-0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed

by the notices, as amended, published in their entirety.

Dated: August 23, 1993.

**L. M. Bynum,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

### AMENDMENTS

#### DGC 04

#### SYSTEM NAME:

Industrial Personnel Security Clearance Case Files (February 22, 1993, 58 FR 10232).

#### CHANGES:

\* \* \* \* \*

#### SYSTEM LOCATION:

First paragraph, second line, delete 'Defense Legal Service Agency' and replace with 'Defense Legal Services Agency'.

Second paragraph, first line, insert 'are held' after 'segments'.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Current and former government contractor employees whose industrial security clearance cases were referred to the Directorate for Industrial Security Clearance Review (DISCR) by the Defense Industrial Security Clearance Office (DISCO) or by the Director, Defense Investigative Service (DIS) for adjudication under E.O. 10865, as implemented by DoD Directive 5220.6.'

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'System includes automated case status records for current cases and inactive cases, an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system, and individual case files.'

Case files include requests for investigation and clearance; general correspondence relating to cases; personnel security questionnaires; investigative reports prepared by various investigative agencies; medical and psychiatric records and evaluations; DISCO referral recommendations; correspondence between applicants for clearance and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, Military Departments, other DoD Components and Federal agencies, Personnel Security Specialists, Department Counsel, Administrative Judges, Appeal Board, and elements of the Office of the Secretary of Defense and Defense Investigative Service; written interrogatories and Statements

of Reasons (SOR) to applicants, with replies, recommendations, summaries, and records of adjudicative actions; transcripts of hearings; and exhibits.

Supplementing the system's case files are redacted copies, with indexes thereto, of DISCR administrative and adjudicative decisions from July 1961 to present. Names and identifying information of applicants, witnesses, sources of information, and other sensitive information are redacted from these decisions to protect the privacy of persons involved.'

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Third line, insert 'E.O. 11382, and E.O. 12829,' after 'E.O. 10909'.

#### PURPOSE(S):

Line 14, delete 'to respond to inquiries from Presidential Staff offices when the inquiry is made at the request of the individual,' and replace with 'to respond to inquiries from offices within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes.'

\* \* \* \* \*

#### STORAGE:

Delete entry and replace with 'Paper records are maintained in file folders, and on vertical file cards at DISCR; and automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.'

#### RETRIEVABILITY:

Line five, replace 'personnel' with 'personal'.

#### SAFEGUARDS:

Delete entry and replace with 'Records are stored in a secured area accessible only to DISCR authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Only information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones or is individually password controlled. Individual passwords are changed quarterly and upon departure of personnel. The automated systems are operated by DISCR and by the Defense Investigative Service, Personnel Investigations Center, Information



Systems Division. Only DISCR personnel with need-to-know are given individual passwords and user identification, information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations have read-only access to DISCR case status records in the system.

**RECORD ACCESS PROCEDURES:**

Insert new sentence at the end of first paragraph 'Some records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.'

Delete second paragraph and replace with 'Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301-1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.*

(Signature)

Move third paragraph to follow first paragraph and change line 1 from 'final determination should' to 'final determinations of Administrative Judges and Appeal Board should'.

**RECORD SOURCE CATEGORIES:**

Change ; from individual, to ; from individuals,.

DGC 04

**SYSTEM NAME:**

Industrial Personnel Security Clearance Case Files.

**SYSTEM LOCATION:**

Directorate for Industrial Security Clearance Review, Defense Legal Services Agency, Department of

Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203-1995.

Decentralized inactive segments are held at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, MD 20755. Automated records are maintained on a system V5-02, Defense Central Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former government contractor employees whose industrial security clearance cases were referred to the Directorate for Industrial Security Clearance Review (DISCR) by the Defense Industrial Security Clearance Office (DISCO) or by the Director, Defense Investigative Service (DIS) for adjudication under E.O. 10865, as implemented by DOD Directive 5220.6.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

System includes automated case status records for current cases and inactive cases, an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system, and individual case files.

Case files include requests for investigation and clearance; general correspondence relating to cases; personnel security questionnaires; investigative reports prepared by various investigative agencies; medical and psychiatric records and evaluations; DISCO referral recommendations; correspondence between applicants for clearance and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, Military Departments, other DoD Components and Federal agencies, Personnel Security Specialists, Department Counsel, Administrative Judges, Appeal Board, and elements of the Office of the Secretary of Defense and Defense Investigative Service; written interrogatories and Statements of Reasons (SOR) to applicants, with replies, recommendations, summaries, and records of adjudicative actions; transcripts of hearings; and exhibits.

Supplementing the system's case files are redacted copies, with indexes thereto, of DISCR administrative and adjudicative decisions from July 1961 to present. Names and identifying information of applicants, witnesses, sources of information, and other sensitive information are redacted from these decisions to protect the privacy of persons involved.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

E.O. 10865, Safeguarding Classified Information Within Industry, as amended by E.O. 10909; E.O. 11382, and E.O. 12829; DOD Directive 5220.6, Industrial Personnel Security Clearance Program; DOD Regulation 5200.2-R, DOD Personnel Security Program (32 CFR part 154).

**PURPOSE(S):**

These records are collected and maintained to determine whether the granting or retention of security clearance to industrial contractor personnel is clearly consistent with the national interest, to record clearance adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DOD Consulting Psychiatrists to compile evaluations and reports; to respond to inquiries from offices within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes; to monitor and control adjudicative actions and processes.

Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Justice in determining claims for reimbursement in preparation of hearings, appeals and Federal Court review.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are maintained in file folders, and on vertical file cards at DISCR; and automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.



**RETRIEVABILITY:**

Filed alphabetically by name or by case number. Access to computer data may be made by name and Social Security Number and a combination of name and other personal identifying data.

**SAFEGUARDS:**

Records are stored in a secured area accessible only to DISCR authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Only information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones or is individually password controlled. Individual passwords are changed quarterly and upon departure of personnel. The automated systems are operated by DISCR and by the Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DISCR personnel with need-to-know are given individual passwords and user identification, information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations have read-only access to DISCR case status records in the system.

**RETENTION AND DISPOSAL:**

Completed case files are retained in office files for two years after annual cut-offs, then are retired to the Washington National Records Center, for an additional 20 years.

Inactive, completed case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Ft. Meade, MD 20755. Automated electronic case status records and alphabetical card index files are retained as locator for both active and inactive records. Computer data and alphabetical card files are purged when the inactive case file is no longer retained.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Directorate for Industrial Security Clearance Review, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203-1995.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203-1995.

**RECORD ACCESS PROCEDURES:**

Request for copies of redacted, final determinations of Administrative Judges and Appeal Board should be sent to the system manager, and should include OSD Case Number of the records request.

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203-1995. Some records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.

Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301-1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.'* (Signature).

**CONTESTING RECORD PROCEDURES:**

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is received from investigative reports from federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of

assignment and Federal agencies DOD organizations, agencies and offices; from individuals, their attorneys or authorized representatives.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

**DGC 05****SYSTEM NAME:**

Administrative Files on Active Psychiatric Consultants to Department of Defense (February 22, 1993, 58 FR 10233).

**CHANGES:**

\* \* \* \* \*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Current list of active DoD psychiatric consultants. Records are filed alphabetically by last name of psychiatrist, and consist of correspondence concerning agreement to conduct psychiatric examinations.'

\* \* \* \* \*

**PURPOSE(S):**

Lines one and two, replace 'to maintain a research of' with 'to maintain as a resource a database of.'

\* \* \* \* \*

**SAFEGUARDS:**

Delete entry and replace with 'Records are stored in a secured area accessible to DISCR authorized personnel.'

\* \* \* \* \*

**SYSTEM MANAGER(S) AND ADDRESS:**

Replace '4015 Wilson Boulevard, Suite 300,' with 'PO Box 3656.'

**NOTIFICATION PROCEDURE:**

Delete '4015 Wilson Boulevard, Suite 300,' and replace with 'PO Box 3656.'

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203-1995. Records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.'



Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301-1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized, or if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.'* (Signature)

\* \* \* \* \*

#### RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Correspondence with individual psychiatrists.'

\* \* \* \* \*

#### DGC 05

#### SYSTEM NAME:

Administrative Files on Active Psychiatric Consultants to Department of Defense.

#### SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Arlington, VA 22203-1995.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Psychiatric consultants who have entered into agreement with the Department of Defense to conduct psychiatric examination of individuals applying for industrial security clearance for access to classified information required in the performance of their work for classified Government contractors.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Current list of active DoD psychiatric consultants. Records are filed alphabetically by last name of psychiatrist, and consist of correspondence concerning agreement to conduct psychiatric examinations.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DOD Directive 5220.6, Industrial Personnel Security Clearance Program; E.O. 10865, February 20, 1960, and Deputy Secretary of Defense Memorandum dated October 20, 1965, Subject: Employment of Psychiatric Consultants for Industrial Security Program.

#### PURPOSE(S):

The purpose of this system is to maintain as a resource a database of active psychiatric consultants available to conduct psychiatric examinations of individual applicants for industrial personnel security clearance in convenient geographical areas. Psychiatric consultants have active professional service agreements with the Department of Defense and are used by DISCR in processing requests for industrial personnel security clearance of individuals.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Paper records in file folders, vertical file cards.

##### RETRIEVABILITY:

Alphabetically by surname.

##### SAFEGUARDS:

Records are stored in a secured area accessible to DISCR authorized personnel.

##### RETENTION AND DISPOSAL:

Destroy six months after agreement between consultant and DOD has been terminated.

##### SYSTEM MANAGER(S) AND ADDRESS:

Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203-1995.

##### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director,

Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203-1995.

#### RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203-1995. Records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.

Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301-1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized, or if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.'* (Signature).

#### CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

#### RECORD SOURCE CATEGORIES:

Correspondence with individual psychiatrists.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

#### DOCHA 01

#### SYSTEM NAME:

Health and Dental Benefits Authorization Files (February 22, 1993, 58 FR 10251).

#### CHANGES:

\* \* \* \* \*

#### SYSTEM NAME:

Delete 'and Dental'.



**SYSTEM LOCATION:**

Delete the eighth paragraph.

\* \* \* \* \*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Lines two and four, delete 'and dental'.

\* \* \* \* \*

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Line six, delete 'and dental'.

\* \* \* \* \*

**DOCHA 01****SYSTEM NAME:**

Health Benefits Authorization Files.

**SYSTEM LOCATION:**

Primary system is located at Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045-6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR) APO New York 09102-5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS.

Each company listed below maintains claim files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314-3408;

Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314-3408;

Uniformed services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201-6660;

Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501-4026;

Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707-7927;

FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502-4900;

Foundation Health Federal Services, Inc., 2 Lakeway Center, Suite 1960, 3850 Causeway Boulevard, Metairie, LA 70002.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All individuals who seek authorization or preauthorization for care under CHAMPUS/CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Original correspondence with individuals, medical statements, Congressional inquiries, medical treatment records, authorization for care, case status sheets, memos for

records, follow-up reports justifying extended care, correspondence with fiscal intermediaries and work-up sheets maintained by case workers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101, 41 CFR part 101-11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397.

**PURPOSE(S):**

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under CHAMPUS.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Determine eligibility of an individual, authorize payment, respond to inquiries from congressional offices made at the request of the individual covered by the system, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for congressional committees and auditors.

Referral to the Secretary of the Department of Health and Human Services and/or the Secretary of the Department of Veterans Affairs consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS. Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of

systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Automated records are maintained on magnetic tape and disc. Paper records maintained in file folders.

**RETRIEVABILITY:**

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

**RETENTION AND DISPOSAL:**

Automated indexes are permanent. Hardcopy records are closed out at the end of the calendar year in which finalized, held one additional year, and transferred to the Federal Records Center (FRC). The FRC will destroy the records after an additional five-year retention.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Program Operations Division, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045-6900.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045-6900.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045-6900.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.



Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

#### CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

#### RECORD SOURCE CATEGORIES:

Contractors, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

#### EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

#### DOCHA 02

##### SYSTEM NAME:

Medical and Dental Care Inquiry Files (February 22, 1993, 58 FR 10252).

##### CHANGES:

##### SYSTEM NAME:

Delete 'and Dental'.

##### SYSTEM LOCATION:

Third paragraph, second line, delete 'and dental'. Delete eighth paragraph.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Line two, delete 'and dental'.

\* \* \* \* \*

#### DOCHA 02

##### SYSTEM NAME:

Medical Care Inquiry Files.

##### SYSTEM LOCATION:

Primary system is located at Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045-6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102-5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS.

Each company listed below maintains medical care inquiry files on

beneficiaries in their respective geographical areas.

Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314-3408;

Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201-6660;

Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501-4026;

Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707-7927;

FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502-4900;

Foundation Health Federal Services, Inc., 2 Lakeway Center, Suite 1960, 3850 Causeway Boulevard, Metairie, LA 70002.

##### CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All individuals who seek information concerning health care under CHAMPUS/CHAMPVA.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting inquiries received from private individuals for information on CHAMPUS/CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101-11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and E.O. 9397.

##### PURPOSE(S):

To maintain and control records pertaining to requests for information concerning the processing of individual CHAMPUS/CHAMPVA claims and the benefit structure and procedures of CHAMPUS/CHAMPVA.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Establish eligibility, respond to inquiries from individuals, and respond to inquiries from congressional offices made at the request of the individual covered.

Referral of the Secretary of the Department of Health and Human Services and/or Secretary of the Department of Veterans Affairs

consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS.

Disclosure to other third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

##### RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

##### SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

##### RETENTION AND DISPOSAL:

Automated indexes are permanent. Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed.

##### SYSTEM MANAGER(S) AND ADDRESS:

Chief, Public and Beneficiary Relations Division, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045-6900.



**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045-6900.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045-6900.

Written requests for information should include the full name of the individual, military sponsor's name and Social Security Number, current address and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that medical record.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

**CONTESTING RECORD PROCEDURES:**

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Services, consultants, and individuals.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

None.

**DOCHA 07****SYSTEM NAME:**

Medical and Dental Claim History Files (February 22, 1993, 58 FR 10253).

**CHANGES:**

\* \* \* \* \*

**SYSTEM NAME:**

Delete 'and Dental'.

**SYSTEM LOCATION:**

Delete eighth paragraph

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Line three, delete 'dental records,'  
Line ten and eleven, delete 'and dental care'.

\* \* \* \* \*

**PURPOSE(S):**

Lines five, six, and seven delete 'dental claims', 'and dental', and '/ dental', respectively.

\* \* \* \* \*

**RECORD SOURCE CATEGORIES:**

Line one, delete 'dentists,'

\* \* \* \* \*

**DOCHA 07****SYSTEM NAME:**

Medical Claim History Files.

**SYSTEM LOCATION:**

Primary system is located at Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045-6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102-5000; and Fiscal intermediaries/Contractors (FIs) under contract to OCHAMPUS.

Each company listed below maintains claim files on beneficiaries in their respective geographical areas.

Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314-3408;

Uniformed services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201-6660;

Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501-4026;

Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707-7927;

FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502-4900;

Foundation Health Federal Services, Inc., 2 Lakeway Center, Suite 1960, 3850 Causeway Boulevard, Metairie, LA 70002.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Eligible beneficiaries and all individuals who seek health care under CHAMPUS/CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains claims, billings for services, applications or approval forms, medical records, family history files, records on appeals and hearings, or any other correspondence, memorandum, or reports which are acquired or utilized in the development and processing of

CHAMPUS/CHAMPVA claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports which are acquired or utilized during the projects.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101; 41 CFR 101-11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397.

**PURPOSE(S):**

OCHAMPUS and its contractors use the information to control and process health care benefits available under CHAMPUS including the processing of medical claims, the control and approval of medical treatments, and necessary interface with providers of health care.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits and civil or criminal litigation related to the operation of CHAMPUS.

Information from CHAMPVA claims will be given to the Department of Veterans Affairs.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

Issuance of deductible certificates; responding to inquiries from congressional offices, made at the request of the person to whom a record pertains; and conducting audits of FI processed claims to determine payment and occurrence accuracy of the FI's adjudication process.

Process and control of recoupment claims in favor of the United States arising under the Federal Claims



Collection Act. In connection with these recoupment claims, information may be disclosed to:

a. The U.S. Department of Justice, including U.S. Attorneys, for legal action and final disposition of the recoupment claims.

b. The Internal Revenue Service to obtain current address information on delinquent accounts receivable (automated controls exist to preclude redisclosure of solicited IRS address information) and to report amounts written-off as uncollectible as taxable income.

c. Private collection agencies for collection action when deemed to be in the best interest of the U.S.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

**RETRIEVABILITY:**

Information is retrieved by sponsor's Social Security Number; beneficiary's name; classification of medical diagnosis, procedure code, or geographical location of care provided; and selected utilization limits.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through the medium of OCHAMPUS prepared computer programs resulting in a printout of the data. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

**RETENTION AND DISPOSAL:**

Records maintained on magnetic tape are individual annual files and are permanent. Paper records are closed out at the calendar year end in which processed, held one additional year, and transferred to the Federal Records Center. Federal Records Centers will

destroy after an additional four-year retention.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Contract Management Division, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045-6900.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045-6900.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045-6900.

Written requests for information should include the full name of the beneficiary, the full name and Social Security Number of the sponsor, current address, and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as driver's license or other form of picture identification.

**CONTESTING RECORD PROCEDURES:**

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Physicians, hospitals, and other sources of care; individuals; insurance companies; and consultants.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

None.

**DWHS P27**

**SYSTEM NAME:**

Department of Defense (DOD) Pentagon Building Pass Application File (February 22, 1993, 58 FR 10274).

**CHANGES:**

\* \* \* \* \*

**SYSTEM NAME:**  
Delete 'Application'.

**SYSTEM LOCATION:**

Delete entry and replace with 'Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.'

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Line two, replace 'employer' with 'employee'.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'File contains name, sponsoring office of the Department of Defense and activities serviced by Washington Headquarters Services (WHS), sex, height, weight, date place of birth, access level, previous pass issuances, authenticating official, total personnel from all sites, and audit counts.'

**PURPOSE(S):**

Line two, replace 'the Physical Security Division,' with 'Security Services, Defense Protective Services.'

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with 'Electronic database'.

**RETRIEVABILITY:**

Delete entry and replace with ''

**SAFEGUARDS:**

Delete entry and replace with 'Secure room. Building has DoD Police Officers'.

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records of pass holders are maintained as active records for as long as the individual holds a DoD pass. Inactive files consisting of individuals who have terminated affiliation with DoD and activities serviced by WHS are retained for five years.'

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Deputy Chief, Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.'

**NOTIFICATION PROCEDURE:**

Delete lines four through nine and replace with 'address written inquiries



to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.

**RECORD ACCESS PROCEDURES:**

Delete lines four through nine and replace with 'inquiries to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.'

\* \* \* \* \*

**DWHS P27**

**SYSTEM NAME:**

Department of Defense (DOD) Pentagon Building Pass File.

**SYSTEM LOCATION:**

Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any Department of Defense military or civilian employee sponsored by the Department of Defense, or other persons who have reason to enter the Pentagon for official Department of Defense business, and who therefore require an entry pass.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains name, sponsoring office of the Department of Defense and activities serviced by Washington Headquarters Services (WHS), sex, height, weight, date place of birth, access level, previous pass issuances, authenticating official, total personnel from all sites, and audit counts.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, and E.O. 9397.

**PURPOSE(S):**

This information is used by officials of Security Services, Defense Protective Services, Directorate for Real Estate and Facilities, WHS to maintain a listing of personnel who are authorized a DOD Pentagon Building Pass.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic database.

**RETRIEVABILITY:**

Electronic database accessible by individual's name, Social Security Number and pass number.

**SAFEGUARDS:**

Secure room. Building has DoD Police Officers.

**RETENTION AND DISPOSAL:**

Records of pass holders are maintained as active records for as long as the individual holds a DoD pass. Inactive files consisting of individuals who have terminated affiliation with DoD and activities serviced by WHS are retained for five years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief, Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301-1155.

**CONTESTING RECORD PROCEDURES:**

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

All data maintained in the system is received voluntarily from individual DOD Pentagon Building Pass Applicants.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 93-20788 Filed 8-26-93; 8:45am]

BILLING CODE 5000-04F

**DEPARTMENT OF ENERGY**

**Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95-91)**

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. Daniel A. Dreyfus has been appointed as a Special Assistant to the Secretary. As a result of his previous employment with the Gas Research Institute, Mr. Dreyfus has vested insurance interests, within the meaning of section 602(c) of the Act, in the postretirement medical and life insurance benefits offered by the Institute. I have granted Mr. Dreyfus a waiver of the divestiture requirement of section 602(a) of the Act with respect to these insurance interests for the duration of his employment with the Department as a supervisory employee.

In accordance with section 208, title 18, United States Code, Mr. Dreyfus has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the Gas Research Institute, unless his appointing official determines that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Mr. Dreyfus.

Dated: August 16, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93-20890 Filed 8-26-93; 8:45 am]

BILLING CODE 6450-01-M

**Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95-91)**

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory



employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. Charles Kyle Simpson has been appointed as Executive Assistant to the Deputy Secretary. As a result of his previous employment with Coastal States Management Corporation, a wholly owned subsidiary of The Coastal Corporation, Mr. Simpson has a vested interest, within the meaning of section 602(c) of the Act, in the Pension Plan for employees of The Coastal Corporation. I have granted Mr. Simpson a waiver of the divestiture requirement of section 602(a) of the Act with respect to this pension interest for the duration of his employment with the Department as a supervisory employee.

In accordance with section 208, title 18, United States Code, Mr. Simpson has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon The Coastal Corporation, unless his appointing official determines that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Mr. Simpson.

Dated: August 16, 1993.

Hazel R. O'Leary,  
Secretary of Energy.

[FR Doc. 93-20891 Filed 8-26-93; 8:45 am]  
BILLING CODE 6450-01-M

#### Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95-91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined by section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined by section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases

where the interest is a pension, insurance or other similarly vested interest.

Victor H. Reis has been appointed to the position of Assistant Secretary for Defense Programs. As a result of his previous employment with the Massachusetts Institute of Technology, Dr. Reis has a vested interest, within the meaning of section 602(c) of the Act, in the Massachusetts Institute of Technology Retirement Plan. I have granted Dr. Reis a waiver of the divestiture requirement of section 602(a) of the Act for the duration of his employment as a supervisory employee with the Department with respect to his pension interest.

In accordance with section 208, title 18, United States Code, Dr. Reis has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the Massachusetts Institute of Technology, unless there has been a determination, pursuant to section 208(b), that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: August 16, 1993.

Hazel R. O'Leary,  
Secretary of Energy.

[FR Doc. 93-20892 Filed 8-26-93; 8:45 am]  
BILLING CODE 6450-01-M

#### Floodplain and Wetlands Involvement for the Centralization and Upgrading of the Sanitary Wastewater System Located on the Savannah River Site (SRS)

AGENCY: Department of Energy (DOE).  
ACTION: Notice of floodplain and wetlands involvement.

**SUMMARY:** The DOE proposes to centralize and upgrade the site sanitary wastewater collection and treatment system located on the SRS near Aiken, South Carolina. Project activities would involve crossing of the floodplain or wetlands of Upper Three Runs Creek and Fourmile Branch and the placement of an outfall structure on Fourmile Branch. These activities would necessitate temporary construction access, burying pipelines, and placing support pillars in SRS floodplains and wetlands. In accordance with applicable Federal and State regulations, the existing National Pollution Discharge Elimination System (NPDES) permit will be modified to include the new effluent discharge and upgrades to the

existing site facilities. In accordance with title 10, CFR, part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

**DATES:** Comments on the proposed actions are due on or before September 13, 1993.

**ADDRESSES:** Comments should be addressed to Floodplain/Wetlands Comments, Stephen R. Wright, Director, Environmental and Laboratory Programs Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. The phone number is (803) 725-3957. Fax comments to: (803) 725-7688.

**FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT:** Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586-4600 or (800) 472-2756.

A location map showing the project sites and further information can be obtained from the Savannah River Operations Office (see ADDRESSES above).

**SUPPLEMENTARY INFORMATION:** DOE proposes to replace or upgrade existing site sanitary wastewater treatment facilities with safe, efficient, and cost-effective facilities to enable SRS to comply with newly promulgated or proposed Federal and State regulations for the treatment and discharge of sanitary wastewater. The proposed action includes replacing most of the aging SRS treatment facilities with a new central treatment facility and connecting them with a new 18-mile primary sanitary sewer collection system. The sewer collection system will include two stream pipeline crossings. The final design of the pipeline would be approved by the South Carolina Department of Health and Environmental Control to minimize the potential for any spill of untreated sewage. The first crossing will occur at Upper Three Runs Creek along SRS Road C. This will entail the untreated sewage pipeline in intermittent stretches of deciduous, intermittently flooded forested wetlands adjacent to Road C prior to crossing of the creek itself. The overstory vegetation in these wetlands is dominated by sweetgum (*Liquidambar styraciflua*), laurel oak (*Quercus laurifolia*), willow oak (*Q. phellos*), water oak (*Q. nigra*) and loblolly pine (*Pinus taeda*). Collectively,



approximately 1,500 linear feet of wetlands will be traversed by the pipeline. The crossing of the creek channel will be aboveground with the pipeline attached to the Road C bridge. Temporary construction access and some clearing of timber will be required to place the pipeline in those wetlands adjacent to Road C. This clearing of timber would primarily involve sweetgum, several of the oak species, and loblolly pine. However, these trees are along the boundary of the Road C right-of-way and have been heavily pruned over time as a result of maintenance of that right-of-way. The approximate area of potential impacts from construction of the first crossing to wetlands and the 100-year floodplain would be less than 1 acre and less than 2 acres, respectively. The second crossing will occur at Fourmile Branch along a transmission line right-of-way west of the 100-C Area. The pipeline crossing is expected to be aboveground, supported by pillars placed in wetlands on either side of the braided stream. This second crossing would span approximately 200 contiguous linear feet of wetlands. Most of the overstory vegetation within the proposed area of impact in the wetlands is either dead or dying. These species include sweetgum, laurel oak, and green ash (*Fraxinus pennsylvanica*). The projected impact area appears to have been receiving sediment over the past 50 to 100 years, and the soil is only partly consolidated, which could contribute to deforestation. There are healthy herbaceous floral species (e.g., panic grass, *Panicum* spp., arrowhead, *Sagittaria* spp., and poison ivy, *Toxicodendron radicans*) that are common in wetlands. Again, temporary construction access and some clearing of timber will be required in order to install this second pipeline crossing. The final component of the proposed action that will involve floodplain and wetlands will be the placement of an outfall structure to discharge treated sanitary wastewater from the new central treatment facility. The existing NPDES permit will be modified to include the new effluent discharge. This outfall structure will be located on Fourmile Branch at the site of the aforementioned pipeline crossing. The outfall pipeline will be aboveground and attached to the concrete pillar on the north side of the stream. The approximate area of impacts from construction of the second crossing and the outfall structure to both wetlands and the 100-year floodplain would be less than 1 acre. Construction activities for the outfall structure and any associated potential impacts will take

place concurrently with the construction of the pipeline crossing on Fourmile Branch.

A number of mitigation activities will be implemented to minimize potential impacts to the floodplain and wetlands. Operation of construction equipment in the wetland and floodplain areas will be minimized. Silt fences and other erosion control structures as needed will be installed to ensure there is no deposition in downslope wetland areas. Long-term construction impacts in the floodplain and wetland areas will be minimized through the removal of excess excavated sidefill and restoration to the original contours following completion of construction. The wetland soils will require platform support mats to work on in order to install the support pillars that will anchor the line over the stream and floodplain. This material will be removed when the line is completed. The discharge from the outfall structure will need to be controlled in such a manner (e.g., placement of riprap) as to not cause erosion to the stream sediment and the water chemistry such that it does not produce problems in downstream water quality. Additionally, an erosion control plan will be developed so that the proposed action complies with applicable State and local floodplain protection standards and further to ensure that no additional impacts to wetlands will occur due to erosion and applicable State and local floodplain protection standards and further to ensure that no additional impacts to wetlands will occur due to erosion and sedimentation. Best management practices will be employed during construction and maintenance activities associated with this proposed action.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (title 10, CFR, part 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA.

Issued in Washington, DC, on August 20, 1993.

Victor Stello, Jr.,

Principal Deputy Assistant Secretary for Facilities Defense Programs.

[FR Doc. 93-20893 Filed 8-26-93; 8:45 am]

BILLING CODE 6450-01-M

### Federal Assistance Award to California Institute of Technology

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the California Institute of Technology for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries. This is not a notice for solicitation of proposals or of financial assistance applications.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Ms. Ruth E. Adams, Contract Specialist.

**SUPPLEMENTARY INFORMATION:** For the past several years, the applicant has been conducting research to develop and demonstrate computer-aided tools which are useful for molecular modeling of enzymatic biocatalytic processes. These computer-aided tools may be used to design biocatalysts for the chemical industry.

Based upon work previously accomplished, specific models will be developed for applied problems of general importance to the chemical industry. This work will pursue the advanced concepts of hierarchical protein folding and protein stichery.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which open competition for assistance would not be productive or beneficial to the public purpose, and would have a significant adverse effect on completion of the activity. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. DOE knows of no other organization which is conducting or is planning to conduct research on atomistic modeling and



stimulation as proposed by the applicant.

DOE funding for this five-year effort is estimated to be \$1,456,713. The anticipated term of the proposed grant shall be sixty months from the effective date of the award.

Issued in Chicago, Illinois, on August 17, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93-20894 Filed 8-26-93; 8:45 am]

BILLING CODE 6450-01-M

### Office of Fossil Energy

#### National Petroleum Council; Meeting Postponement Notice

An open meeting of the National Petroleum Council which was scheduled to be held on Tuesday, August 31, 1993, at 9 a.m., the Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, D.C., has been postponed. This meeting was announced in the *Federal Register*, on Monday, August 9, 1993. (58 FR 42309)

Issued at Washington, DC, on August 25, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93-20946 Filed 8-26-93; 8:45 am]

BILLING CODE 6450-01-M

#### Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Proposed establishment of a new Privacy Act system of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) to publish a notice in the *Federal Register* of a proposed system of records. The Department of Energy (DOE) proposes to establish a new system of records entitled, "DOE-82, Grant and Contract Records for Research Projects, Science Education, and Related Activities."

DATES: The proposed new system of records will become effective without further notice 60 days after publication in the *Federal Register* (October 26, 1993), unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Chief, Freedom of Information and Privacy, U.S. Department of Energy, AD-621, 1000 Independence Avenue, SW., Washington, DC 20585. Written

comments will be available for inspection at the above address between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Robert A. Zich, Director, Acquisition and Assistance Management Division, Office of Management, ER-64, Office of Energy Research, Washington, DC 20585, (301) 903-5544 or (2) Denise Diggin, Chief, Freedom of Information and Privacy Act, AD-621, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 585-5955 or (3) Abel Lopez, Office of General Counsel, GC-43, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-8618.

SUPPLEMENTARY INFORMATION: DOE proposes to establish a new system of records entitled "DOE-82, Grant and Contract Records for Research Projects, Science Education, and Related Activities." This system of records will contain records of grant applications and contract proposals submitted to DOE for funding, written technical reviews by expert peer reviewers, and records of grant and contract awards.

The DOE Office of Energy Research supports research in the natural and physical sciences, including high energy and nuclear physics, magnetic fusion energy; biological and environmental research, and basic energy sciences research in the materials, chemical, and applied mathematical sciences, engineering and geosciences, and energy biosciences. The basic research programs help build the science and technology base that underpins energy development by Government and industry. In addition, support of specialized pre-college and university science education and manpower development efforts helps ensure the training of advanced energy researchers and broadens the pool of experienced scientists and engineers.

The DOE Office of Energy Research solicits grant applications and contract proposals for research, science education and related activities in the program areas described above. When received by DOE, applications and proposals are generally subjected to scientific or peer review. Expert reviewers, selected by the DOE project officer for their expertise in specific research areas, provide to DOE written analyses of the merits of proposed projects.

Applications and proposals selected for award are funded, as appropriate, through grants, contracts, or other award instruments.

The text of the system notice is set forth below.

Issued in Washington, DC this 20th day of August, 1993.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration

#### DOE-82

##### SYSTEM NAME:

Grant and Contract Records for Research Projects, Science Education, and Related Activities.

##### SECURITY CLASSIFICATION:

None.

##### SYSTEM LOCATION:

Office of Energy Research, U.S. Department of Energy (DOE).

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals on whom records are maintained: (1) Principal Investigator, i.e., the scientist or other individual designated by the applicant or proposer to direct the project; (2) DOE Project Officer, i.e., the individual at DOE who is responsible for the review and evaluation of the application or proposal and the monitoring of a resulting grant or contract; and (3) Peer Reviewer, i.e., the individual who provides a written review or evaluation of the application or proposal to the DOE Project Officer.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include grant applications, contract proposals, technical reviews by peer reviewer, records of grant and contract awards, and any other pertinent information needed for the approval of a grant or contract.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Section 644, Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act.

##### PURPOSE(S):

The purpose of the system is to track and monitor the receipt, review, and disposition of grant applications and contract proposals from universities, non-profit organizations, large and small businesses, other Federal agencies, State and local governments, and individuals seeking Federal financial support for research projects, training, and related activities.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

A record in this system may be disclosed to expert peer reviewers selected by DOE for their expertise in specific research areas to evaluate the



application or proposal in accordance with established evaluation criteria.

A record from this system may be disclosed to DOE contractors in performance of their contracts if they have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

A record in this system may be disclosed to a member of Congress submitting a request involving a principal investigator or a peer reviewer when the individual is a constituent of the member and has requested assistance from the member with respect to the records maintained about the individual.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, hard disk, or diskette.

**RETRIEVABILITY:**

Records are retrieved by application or proposal number, award number, applicant, name of principal investigator, peer reviewer, or DOE project officer.

**SAFEGUARDS:**

Manual and machine readable records are treated as sensitive, unclassified materials. Records are stored in unlocked cabinets in offices within secured buildings, and access is on a need-to-know basis.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with authorities contained in DOE Order 1324.2, "Records Disposition."

**SYSTEM MANAGER AND ADDRESS:**

U.S. Department of Energy, Director, Acquisition and Assistance Management Division, Office of Management, Office of Energy Research, Washington, DC 20585, (301) 903-5544.

**NOTIFICATION PROCEDURE:**

Requests by an individual to determine if this system of records contains information about him or her should be directed to the Privacy Act Officer, U.S. Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR part 1008, September 16, 1980, 45 FR 61576). Requests should include the individual's full name; applicant, proposer, or awardee organization name and address; the date the application or proposal was submitted to DOE; and the

dates of any resulting grant or contract awards.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures.

**RECORD SOURCE CATEGORIES:**

Grant applications and contract proposals.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 93-20895 Filed 8-26-93; 8:45 a.m.]

BILLING CODE 6450-01-P

**Federal Energy Regulatory Commission**

[Docket Nos. ER93-858-000, et al.]

**Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

**1. Boston Edison Co.**

[Docket No. ER93-858-000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Hingham Municipal Lighting Plant (Hingham) under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Hingham.

Edison states that it has served the filing on Hingham and the Massachusetts Department of Public Utilities.

*Comment date:* September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. Public Service Electric and Gas Co.**

[Docket No. ER93-862-000]

August 18, 1993.

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on August 12, 1993, tendered for filing an Agreement for the sale of Capacity and Energy to the Borough of Park Ridge, New Jersey (Park Ridge). Pursuant to the Agreement, PSE&G proposes to begin selling power effective October 1, 1993 in an effort to provide economic benefit to Park Ridge.

PSE&G requests the Commission to waive its notice requirements under

§ 35.3 of its Rules and to permit the Capacity and Energy Sales Agreement to become effective by October 1, 1993.

Copies of the filing have been served upon Park Ridge and the New Jersey Board of Regulatory Commissioners.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

*Comment date:* September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Boston Edison Co.**

[Docket No. ER93-857-000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Braintree Electric Light Department (Braintree) under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Braintree.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

*Comment date:* September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. Boston Edison Co.**

[Docket No. ER93-859-000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Norwood Municipal Light Department (Norwood) under its FERC Electric Tariff, Original Volume No. 4, Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Norwood.

Edison states that it has served the filing on Norwood and the Massachusetts Department of Public Utilities.

*Comment date:* September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. Boston Edison Co.**

[Docket No. ER93-860-000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Reading Municipal Light Department (Reading)



under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Reading.

Edison states that it has served the filing on Reading and the Massachusetts Department of Public Utilities.

*Comment date:* September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Public Service Electric and Gas Co.

[Docket No. ER93-862-000]

August 19, 1993.

Take notice that on August 12, 1993, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an Agreement for the sale of Capacity and Energy to the Borough of Park Ridge, New Jersey (Park Ridge). Pursuant to the Agreement, PSE&G proposes to begin selling power effective October 1, 1993, in an effort to provide economic benefit to Park Ridge.

PSE&G requests the Commission to waive its notice requirements under § 35.3 of its Rules and to permit the Capacity and Energy Sales Agreement to become effective by October 1, 1993.

Copies of the filing have been served upon Park Ridge and the New Jersey Board of Regulatory Commissioners.

*Comment date:* September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 7. The Washington Water Power Co.

[Docket No. ER93-866-000]

August 19, 1993.

Take notice that on August 16, 1993, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Agreement for the Purchase and sale of Power between The Washington Water Power Company (WWP) and Public Utility District No. 1 of Douglas County, WWP requests that the Commission accept the Agreement for filing, effective as of July 1, 1992 and grant waiver of the prior notice requirement.

A copy of the filing was served upon Public Utility District No. 1 of Douglas County.

*Comment date:* September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Niagara Mohawk Power Corp.

[Docket No. ER93-868-000]

August 19, 1993.

Take notice that on August 16, 1993, Niagara Mohawk Power Corporation

(Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and the Pennsylvania Electric Company (Penelec) dated August 10, 1966 providing for certain borderline sales to Penelec. Niagara Mohawk is filing this under the general amnesty announced by the Commission in its final order issued on July 30, 1993 in Docket No. PL93-2-002.

The August 10, 1966 agreement provides for Niagara Mohawk sales to Penelec at various points of delivery near the border of Niagara Mohawk's and Penelec's service territories in Northwestern Pennsylvania. The rates contained in the agreement are Niagara Mohawk's standard borderline rates approved by the New York State Public Service Commission under Niagara Mohawk's PSC Tariff No. 207, SC No. 2.

The effective date of August 10, 1966 is requested by Niagara Mohawk.

Copies of this filing were served upon Penelec and the New York State Public Service Commission.

*Comment date:* September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 9. Northeast Utilities Service Co.

[Docket No. ER93-867-000]

August 19, 1993.

Take notice that on August 16, 1993, Northeast Utilities Service Company tendered for filing a System Power Sales Agreement between the NU System Companies and SouthHadley Electric Light Department.

*Comment date:* September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Montaup Electric Co.

[Docket No. ER93-624-000]

August 19, 1993.

Take notice that on August 16, 1993, Montaup Electric Company filed an executed amendment to the contract between itself and MASSPOWER. The executed amendment is to be substituted for the unexecuted version which was submitted with the original filing.

*Comment date:* September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 11. Southwestern Public Service Co.

[Docket No. ER93-863-000]

August 19, 1993.

Take notice that on August 12, 1993, Southwestern Public Service Company (Southwestern) tendered for filing a Rate Schedule to be included in its wholesale electric rate tariff. The rate schedule is a contribution in aid of construction agreement between Southwestern and

Farmers' Electric Cooperative. The agreement provides for Farmers' to pay Southwestern \$34,669,000 for the construction of a steel transmission tower.

Southwestern has requested that the amendment become effective as of the date service commences over the new tower and has requested a waiver pursuant to 18 CFR 35.11. The waiver request is supported by the agreement of Farmers.

*Comment date:* September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 12. Public Service Co. of New Mexico

[Docket No. ER93-871-000]

August 20, 1993.

Take notice that on August 17, 1993, Public Service Company of New Mexico (PNM) tendered for filing an Interconnection Agreement (including associated Service Schedules A, B, C, D and E) between PNM and Utah Associated Municipal Power Systems (UAMPS). The Interconnection Agreement provides, among other things, for the indirect interconnection of PNM's and UAMPS' electric systems, for the exchange of power and energy between the Parties' systems for emergency assistance and other purposes and for the transmission of UAMPS' power and energy associated with its contracted purchase from PNM of an interest in San Juan Generating Station Unit 4.

Copies of the filing have been served upon UAMPS and the New Mexico Public Utility Commission.

*Comment date:* September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 13. Duke Power Co.

[Docket No. ER93-873-000]

August 20, 1993.

Take notice that on August 17, 1993, Duke Power Company (Duke) filed a supplement to its Electric Power Contract with Due West, South Carolina. This contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10. The supplement provides for an increase in contracted delivery voltage at Delivery Point No. 1 to 4.16 Kv at the request of the customer.

*Comment date:* September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Southern California Edison Co.

[Docket No. ER93-874-000]

August 20, 1993.

Take notice that on August 17, 1993, Southern California Edison Company



(Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on March 23, 1993, by the respective parties: PacifiCorp-Edison Transmission Service Agreement Between PacifiCorp and Southern California Edison Company (Agreement).

The Agreement provides the terms and conditions whereby Edison will provide transmission service for power received by Edison at the Palo Verde Nuclear Generating Station for delivery to PacifiCorp at the California-Oregon Border. Edison will provide 78 MW of transmission service through December 31, 1993, and beginning on January 1, 1994, Edison will provide 260 MW of transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Duke Power Co.

[Docket No. ER93-872-000]

August 20, 1993.

Take notice that on August 17, 1993, Duke Power Company (Duke) filed a supplement to its Electric Power Contract with Forest City, North Carolina. This contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10. The supplement provides for increased capacity at Delivery Point No. 3 with a contracted demand of 15,999 kW at an existing delivery point at the request of the customer.

*Comment date:* September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Black Hills Corp.

[Docket No. EC93-23-000]

August 20, 1993.

Take notice that on August 17, 1993, Black Hills Corporation, which operates its electric utility under the assumed name of Black Hills Power and Light Company (BHPL), pursuant to section 203(a) of the Federal Power Act, 16 U.S.C. 824b, tendered for filing an Application for an order authorizing BHPL to sell the Spearfish-to-Kirk 230 kV transmission line (approximately 18.2 miles of line located in Lawrence County, South Dakota, referred to herein as the "230 kV Addition") to Basin Electric Power Cooperative (BEPC), a rural electric generation and transmission cooperative. The 230 kV Addition is a new addition, energized on February 9, 1993, to BHPL's

integrated 230 kV transmission system which is used by both BHPL and BEPC to serve their respective customers in the transmission area consisting of the Black Hills area of western South Dakota, the northeastern area of Wyoming and a small area in southeastern Montana. The purpose of the sale is to equalize BEPC's contribution to the area transmission system with its ratio of use. BEPC proposed to pay BHPL its actual construction costs incurred to permit and build the 230 kV Addition.

BHPL generates, transmits, distributes and sells electricity to approximately 52,778 retail customers and one wholesale customer in portions of eleven counties in western South Dakota, eastern Wyoming and southeastern Montana. BHPL's retail operations are subject to regulation by the state commissions of South Dakota, Wyoming and Montana. Subject to the jurisdiction of the Federal Energy Regulatory Commission, BHPL provides partial requirements wholesale to Gillette, Wyoming and transmission service to rural electric cooperatives and purchases electricity from neighboring utilities.

BEPC is a rural electric transmission and generation cooperative which generates, purchases, transmits and sells electricity primarily to rural electric members, including those located in western South Dakota and northeastern Wyoming.

BHPL believes that the sale of the 230 kV Addition to BEPC will be in the best interests of the public and its customers and shareholders and the members of BEPC in that it furthers the cooperation of BHPL and the rural electric cooperatives to use one integrated transmission system jointly and efficiently without requiring duplication of facilities and provides for the equalization of capital contribution with the ratio of use by each party.

BHPL has requested that further notice be waived and the application be expedited.

*Comment date:* September 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20800 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7809-007 Vermont]

#### Emerson Falls Hydro, Inc.; Availability of Environmental Assessment

August 24, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of exemption to retain 1-foot-high flashboards on the crest of the Emerson Falls Dam. Emerson Falls Dam is located on the Sleepers River in Caledonia County, Vermont. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the action. In the EA, the staff concludes that retaining the existing flashboards would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-20842 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11035-001 North Carolina]

#### B. Everett Jordan Hydro Associates; Surrender of Preliminary Permit

August 23, 1993.

Take notice that the B. Everett Jordan Hydro Associates, permittee for the B. Everett Jordan Hydro Project No. 11035, located on the Haw River, in Chatham County, North Carolina, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 25, 1991, and would have expired on May 31, 1994. The permittee states that the project would be economically infeasible.



The permittee filed the request on July 23, 1993, and the preliminary permit for Project No. 11035 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,  
Secretary

[FR Doc. 93-20816 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Project No. 11026-001 Georgia]

**Savannah Hydro Associates;  
Surrender of Preliminary Permit**

August 23, 1993.

Take notice that the Savannah Hydro Associates, permittee for the New Savannah Bluff Hydro Project No. 11026, located on the Savannah River, in Aiken County, Georgia, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 31, 1991, and would have expired on April 30, 1994. The permittee states that the project would be economically infeasible.

The permittee filed the request on July 23, 1993, and the preliminary permit for Project No. 11026 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,  
Secretary

[FR Doc. 93-20815 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER93-875-000]

**Arizona Public Service Co.; Filing**

August 23, 1993.

Take notice that on August 18, 1993, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Transmission Service Agreement between Arizona Public Service Company (APS or Company) and Tohono O'odham Utility Authority (TOUA) (APS-FERC Rate Schedule No.

161) (Exhibit and Agreement). The Exhibit lists Contract Demands applicable under the Agreement.

No change to the rate and revenue levels currently on file with the Commission is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 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. 93-20817 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ID-2338-001]

**Hugh M. Chapman; Notice of Filing**

August 23, 1993.

Take notice that on August 3, 1993, Hugh M. Chapman (Applicant) tendered for filing an Application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, South Carolina Electric and Gas Company  
Director, South Carolina Generating Company, Inc.  
Executive Officer (Chairman of Nationsbank South), NationsBank Corporation  
Chairman of the Board and Director, NationsBank of Florida, N.A.  
Chairman of the Board and Director, NationsBank of Georgia, N.A.  
Chairman of the Board and Director, NationsBank of Tennessee, N.A.  
Director, C&S Premises, Inc.  
Chairman of the Board and Director, Sovran Capital Management Corporation  
Director, Ocmulgee Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 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. 93-20810 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. ER92-236-005 and EL92-13-000]

**Delmarva Power & Light Co.; Filing**

August 23, 1993.

Take notice that on August 13, 1993, Delmarva Power & Light Company (Delmarva) tendered for filing its compliance refund report in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 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. 93-20813 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP93-669-000]

**Florida Gas Transmission Co.;  
Application**

August 23, 1993.

Take notice that on August 16, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93-



669-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two transportation service agreements under FGT's Rate Schedules X-13 and X-17, all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT states that on May 1, 1979, the Commission issued an order in Docket No. CP78-537 granting, among other things, FGT authority to transport Southern Natural Gas Company's (SNG) share of natural gas produced from South Marsh Island Blocks 149 and 150, Offshore Louisiana. FGT further states that the transportation service was performed pursuant to two transportation service agreements both dated September 12, 1978, as amended. Rate Schedule X-13 represented the offshore transportation segment under which FGT would transport for SNG, on a firm basis, up to 80,000 MMBtu per month, it is stated. FGT says that Rate Schedule X-17 represented the onshore transportation segment under which FGT would transport for SNG, on an interruptible basis, up to 5,000 MMBtu per day. FGT states that for the reason FGT no longer provides SNG transportation services under Rate Schedules X-13 and X-17, both parties have agreed to terminate the aforementioned service agreements. FGT does not propose to abandon any facilities herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-20802 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-740-000]

**Montenay Montgomery Limited Partnership; Issuance of Order**

August 24, 1993.

On June 29, 1993, Montenay Montgomery Limited Partnership (MMLP) submitted for filing a power sale agreement with Public Service Electric and Gas Company. MMLP also requested waiver of various Commission regulations. In particular, MMLP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MMLP.

On August 18, 1993, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted the requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MMLP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MMLP is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that said issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of MMLP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is September 17, 1993.

Copies of the full text of the order are available for public inspection at the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE, Washington, DC 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93-20843 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-861-000]

**Ohio Edison Co.; Filing**

August 23, 1993.

Take notice that on August 12, 1993, Allegheny Power Service Corporation on behalf of Ohio Edison Company, Pennsylvania Power Company, Potomac Electric Power Company, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing Notices of Cancellation of FERC Rate Schedule Nos. 39, 40, 44, and 148.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 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. 93-20804 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-876-000]

**Pennsylvania Electric Co.; Filing**

August 23, 1993.

Take notice that on August 18, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to



Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Butler, New Jersey. Under such Agreement, Penelec proposes to provide supplemental power service to Butler through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for such supplemental power service to such delivery point for Butler will be based upon the rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allegheny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also those employed by Penelec, beginning July 29, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93-669-000).

The transmission service to deliver such Penelec supplemental power to Butler will be provided by JCP&L, and the rate charged by JCP&L to deliver such service will be similar to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc.

Copies of the filing have been served on Butler.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 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. 93-20814 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER93-765-000]

#### Potomac Edison Co.; Filing

August 23, 1993.

Take notice that on August 11, 1993, tendered for filing a Supplement No. 1 to proposed changes in its FERC Electric Tariff, First Revised Volume No. 3. This Supplement is filed to supply additional information as requested by the Commission staff. The proposed effective date for the increased rates is September 15, 1993.

Copies of the filing were served upon the jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 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. 93-20806 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER93-691-000]

#### Potomac Electric Power Co.; Filing

August 23, 1993.

Take notice that on August 6, 1993, Potomac Electric Power Company (PEPCO) tendered for filing an amendment to its original filing filed in the above-referenced docket on June 2, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 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. 93-20812 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RS92-9-004]

#### Questar Pipeline Co.; Technical Conference

August 24, 1993.

In the Commission's August 2, 1993 order on Questar Pipeline Company's Order No. 636 compliance filing,<sup>1</sup> the Commission determined that certain issues needed to be discussed at a technical conference. The conference to address these issues will be held on Thursday, September 2, 1993, beginning at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons are invited to attend.

Linwood A. Watson, Jr.,  
Acting Secretary.

[FR Doc. 93-20844 Filed 8-26-93; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER93-526-000]

#### Tampa Electric Co.; Filing

August 23, 1993.

Take notice that on April 15, 1993, Tampa Electric Company (Tampa) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 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.

<sup>1</sup> 64 FERC ¶ 61,157 (1993).



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. 93-20805 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-19-29-000]

**Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff**

August 23, 1993.

Take notice that on August 18, 1993 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Eighth Revised Sixth Revised Sheet No. 28, with a proposed effective date of August 1, 1993.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28, the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

TGPL states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S-2 rates.

TGPL states that copies of the filing are being mailed to each of its S-2 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 30, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20803 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-877-000]

**West Texas Utilities Co.; Filing**

August 23, 1993.

Take notice that on August 18, 1993, West Texas Utilities Company (WTU), tendered for filing a Service Agreement between WTU and the City of Brady, Texas (Brady). Under the terms of the agreement, Brady will become a full-requirements customer under WTU's FERC Electric Tariff-TR-1, WTU's tariff of general availability for full-requirements service.

WTU requests waiver of the notice requirements in order that the agreement may become effective as of August 23, 1993.

Copies of the filing have been served on Brady and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 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. 93-20807 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-671-000]

**Williams Natural Gas Co.; Application**

August 23, 1993.

Take notice that on August 17, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93-671-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange agreement with Arkla Energy Resources, Inc. (Arkla) all as more fully set forth in

the application which is on file with the Commission and open to public inspection.

WNG states that it was authorized to exchange up to 10,000 Mcf of natural gas per day, on an interruptible basis, with Arkla by Commission order issued November 1, 1971, in Docket No. CP72-15, as amended. WNG has been providing this service under its Rate Schedule X-11, it is stated. WNG asserts that, by letter dated September 30, 1992, it provided Arkla written notification to terminate the exchange agreement effective March 31, 1993.

WNG further states that no facilities will be abandoned in conjunction with the abandonment of this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be



unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20801 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-865-000]

### Wisconsin Power & Light Co. Filing

August 23, 1993.

Take notice that on August 13, 1993, Wisconsin Power & Light Company (WP&L) tendered for filing Notices of Cancellation of FERC Rate Schedule Nos. 4 and 137.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 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. 93-20811 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

### ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4624-1]

#### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 9, 1993 through August 13, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

#### Draft EISs

##### ERP No. D-AFS-J65206-CO

Rating EO2, Snowmass Ski Area Upgrading and Expansion Development Plan, Special Use Permit and COE Section 404 Permit, White River National Forest, Aspen Ranger District, Pitkin County, CO.

##### Summary

EPA expressed environmental objections to the proposed action due to significant air and water quality impacts. EPA requested that the final EIS contain additional analysis and mitigation.

##### ERP No. D-BLM-E02007-FL

Rating EC2, Miccosukee Indian Reservation Exploratory Well Drilling, Lease and Permit, City of Fort Lauderdale, Broward County, FL.

##### Summary

EPA expressed environmental concerns based on the following issues: Impacts of access road construction, 404 jurisdictional wetlands, cultural resources, disposed of drill cuttings, fuel spill and ground water contamination. EPA requested more details on spill prevention and countermeasure plans, and copies of well logs taken during activities. Impact analyses of full field production were requested.

##### ERP No. D-NPS-E61034-MS

Rating EC2, Natchez National Historical Park Management, Development and Use Plan, Implementation, Adams County, MS.

##### Summary

EPA had environmental concerns and requested more details of the Park's plans to alter the angle of repose of the bluffs, and asked for waste reduction and energy conservation measures to be considered for the visitor center.

##### ERP No. D-SFW-H64002-MO

Rating L01, New Madrid National Wildlife Refuge Establishment, Land Acquisition, New Madrid County, MO.

##### Summary

EPA expressed concerns about the lack of discussion in the DEIS regarding impacts to wetlands and waterways as a result of project implementation and requested additional information in the final EIS.

##### ERP No. DS-FRC-L05201-ID

Rating E02, Shelley (FERC. No. 5090) Hydroelectric Project on the Snake River, Construction and Operation,

Licensing, Updated Information, City of Idaho Falls, Bingham County, ID.

##### Summary

EPA had environmental objections based on: inadequate mitigation for highly valued riparian and wetland functions and values; and the elimination of roost trees and winter foraging habitat for the federally listed endangered species, the bald eagle.

#### Final EISs

##### ERP No. F-AFS-L65162-ID

Emerald Resource Unit Timber Harvest and Road Construction, Implementation, Idaho Panhandle National Forests, Emerald Creek Drainage, St. Maries Ranger District, Benweah, Shoshone and Latah Counties, ID.

##### Summary

Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

##### ERP No. F-AFS-L65168-AK

North and East Kuiu Timber Harvest, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Kuiu Island, AK.

##### Summary

Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

##### ERP No. F-SCS-J36045-WY

Allison Draw Watershed Protection and Flood Control Plan, Implementation, Funding, Section 404 Permit and Right-of-Way, Laramie County, WY.

##### Summary

EPA continued to express environmental concerns regarding the lack of a full alternatives analysis.

##### ERP No. F1-AFS-J65105-CO

Grand Mesa, Uncompahgre, and Gunnison National Forests, Land and Resource Management Plan, Implementation, Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan and San Miguel Counties, CO.

##### Summary

EPA continued to express environmental concerns that the document does not address baseline data water quality needs for the leasing analysis.



Dated: August 24, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93-20851 Filed 8-26-93; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4623-9]

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed August 16, 1993 Through August 20, 1993 Pursuant to 40 CFR 1506.9.

**EIS No. 930288, DRAFT EIS, COE, CA,** Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction and Mining-Use-Permit, City of Healsburg, Sonoma County, CA, Due: October 12, 1993, Contact: Lars Forsman (415) 744-3322.

**EIS No. 930289, DRAFT EIS, AFS, AK,** Shamrock Timber Sales, Timber Harvesting and Road Construction, Stikine Area, Kupreanof Island, Tongass National Forest, Implementation, AK, Due: October 18, 1993, Contact: Jim Thompson (907) 772-3871.

**EIS No. 930290, FINAL EIS, AFS, MT,** Buck-Little Boulder Timber Sales, Timber Harvest, Implementation, Bitterroot River, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT, Due: September 27, 1993, Contact: Stewart Lovejoy (406) 821-3678.

**EIS No. 930291, DRAFT EIS, NPS, NY,** Hamilton Grange National Memorial, General Management Plan, Implementation, New York County, NY, Due: October 15, 1993, Contact: Georgette Nelms (212) 264-4456.

**EIS No. 930292, FINAL EIS, COE, CA,** Prado Dam Water Conservation Plan Implementation, Prado Flood Control Basin, Santa Ana River, Riverside and San Bernardino Counties, CA, Due: September 27, 1993, Contact: Alex Watt (213) 894-5990.

**EIS No. 930293, FINAL SUPPLEMENT,** BLM, NV, Egan Resource Management Plan (RMP), Oil and Gas Leasing Amendment, Updated Information, Implementation, Ely District, White Pine Lincoln and Nye Counties, NV, Due: September 30, 1993, Contact: Neil D. Talbot (702) 785-6464.

**EIS No. 930294, FINAL EIS, AFS, MN,** Superior National Forest Land and Resource Management Plan, Adoption of Boundary Waters Canoe Area (BWCA) Wilderness Management

Plan, Implementation, Cook, Lake and St. Louis Counties, MN, Due: September 27, 1993, Contact: James H. Rogers (218) 720-5492.

**EIS No. 930295, DRAFT EIS, USN, WA,** Whidbey Island Naval Air Station, Air Operations Management between Ault Field and Outlying Field Coupeville, Oak Harbor, WA, Due: October 12, 1993, Contact: Peter W. Havens (206) 476-5773.

**EIS No. 930296, DRAFT EIS, BPA, WA,** ID, CA, UT, AZ, OR, MT, NV, NM, WY, Alternating Current (AC) Intertie Transmission Facilities, Capacity Ownership and Federal Marketing and Joint Ventures, Implementation, WA, OR, ID, MT, CA, NV, UT, NM, AZ, WY and British Columbia, Due: October 12, 1993, Contact: Roy B. Fox (503) 230-4261.

**EIS No. 930297, DRAFT EIS, FHW, OH,** OH-129/Princeton Road Transportation Improvements, from OH-129 to OH-4 in the City of Hamilton and I-75, Funding, NPDES Permit and COE Section 404 Permit, Butler County, OH, Due: October 12, 1993, Contact: Fred Hempel (614) 469-6896.

### Amended Notices

**EIS No. 900385, DRAFT EIS, AFS, ID,** Swamp Ridge Timber Sales and Road Construction, Portions of Swamp, Shell, Sugar, Pollock, and Lake Creek Drainages, Implementation, Clearwater National Forest, North Fork Ranger District, Clearwater County, ID, Due: January 17, 1991, Contact: Arthur S. Bourassa (208) 476-3775. Published FR 06-21-89—Officially Canceled by Preparing Agency.

**EIS No. 930216, DRAFT EIS, AFS, OR,** Eagle Creek Timber Sale and Road Construction, Implementation, Estacada and Zigzag Ranger Districts, MT, Hood National Forest, Clackamas County, OR, Due: September 07, 1993, Contact: Janet Anderson-Tyler (503) 630-6861. Published FR-07-09-93—Review period extended.

**EIS No. 930220, FINAL EIS, USA, CA,** Fort Ord Disposal and Reuse Installation, Implementation, Establishment of Presidio of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA, Due: September 17, 1993, Contact: Bob Verkade (916) 557-7423. Published FR 07-09-93—Review period extended.

Dated: August 24, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93-20850 Filed 8-26-93; 8:45 am]

BILLING CODE 6560-50-U-M

### FEDERAL COMMUNICATIONS COMMISSION

#### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 19, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.

Title: Application for Renewal of Amateur Radio Station License.

Form Number: FCC Form 610-R.

Action: New collection.

Respondents: Individuals or households.

Frequency of Response: Every 10 years.

Estimated Annual Burden: 2,000 responses; .084 hours average burden per response; 168 hours total annual burden.

Needs and Uses: In accordance with FCC Rules, Amateur Radio Service licensees are required to apply for renewal of their radio station license every ten years. In lieu of filing a FCC Form 610, the Commission has developed this "short form" for license renewal. This form will be computer-generated and mailed to licensees near the end of their ten year license term. Licensees will no longer have to contact the Commission for an application at renewal time; will be informed when their license is about to expire; and can renew simply by signing and returning the application as opposed to answering several questions on the FCC Form 610. The FCC staff will use the data to determine the eligibility for radio station renewal authorization and to issue a license. Data is also used in conjunction with Field Engineers for enforcement and interference resolution purposes.



Federal Communications Commission.  
 William F. Caton,  
 Acting Secretary.  
 [FR Doc. 93-20830 Filed 8-26-93; 8:45 am]  
 BILLING CODE 6712-01-M

## GENERAL SERVICES ADMINISTRATION

### Post-FTS2000 Concept Development Conference

August 19, 1993.

**AGENCY:** General Services  
 Administration.

**ACTION:** Notice of Post-FTS2000 Concept  
 Development Conference.

**SUMMARY:** The federal government currently meets its needs for inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in December 1998. The federal government would like a free and open discussion of ideas related to the provision of inter-city telecommunications resources to its users after 1998.

The May 14, 1993, edition of the Commerce Business Daily (Issue No. PSA-0846), requested ideas and comments related to the provision of telecommunications services to federal government users in the post-FTS2000 environment. To hear further comments and encourage discussion of different points of view on the post-FTS2000 environment, the government plans to conduct the Post-FTS2000 Concept Development Conference. This conference will provide an opportunity for the presentation of multiple points of view related to: the future direction of the telecommunications marketplace, services, technology, and regulation; the future telecommunications requirements of the federal government, including major government and society trends likely to affect future telecommunications requirements; strategies for the procurement of telecommunications services and systems; program management strategies; possible price structures; and, how the government can ensure continuing competitive prices.

The Post-FTS2000 Concept Development Conference will be held October 19 through 21, 1993, at the Department of Commerce Auditorium, located at 100 14th Street, NW., Washington, DC. The conference will feature speakers and panels of experts presenting visions of future telecommunications technology and marketplaces, and views on how best to provide telecommunications services to government users.

Individuals with a specific interest may request an opportunity to speak on a particular topic with the understanding that the Government will limit the number of presentations. Questions and responses will be taken on a time-available basis following questions from government representatives.

Admission to the conference will require advance reservation. Reservations by name(s) may be requested in writing at General Services Administration, Attention: Concept Development Conference Reservations, 7980 Boeing Court, Vienna, VA 22182-3988, by fax at (703) 760-7523, or electronically at [concept@access.digex.com](mailto:concept@access.digex.com). Reservation requests must be received by September 1, 1993. Reservations will be confirmed by September 15, 1993, on a space available and equitable basis. Since the government is unlikely to be able to accommodate all who would like to attend this conference we are considering broadcasting the conference via satellite so that it would be available for downlink. To determine whether there is demand for such a capability please respond to the address listed above by September 10 if you would like to have access to the conference via satellite. Technical information will be published at a later date if there is sufficient interest.

A preliminary conference agenda is as follows: Day 1—October 19, 1993: (a) The Context of the Post-FTS2000, (b) Government Requirements and the Available Technologies, Services, and Marketplace; Day 2—October 20, 1993: (a) Telecommunications Regulation and Pricing, (b) Telecommunications Administration, Management, and Oversight; Day 3—October 21, 1993: Acquisition Strategies.

**DATES:** Reservations request for the Concept Development Conference must be received by September 1, 1993. If you like to have access to the conference via satellite, please respond by September 10, 1993. Reservations to the conference will be confirmed by September 15, 1993. Post-FTS2000 Concept Development Conference will be held from October 19 through 21, 1993.

**ADDRESSES:** (1) Requests for reservations to the Concept Development Conference and requests for accessing the conference via satellite should be submitted in writing to: General Services Administration, Attn: Concept Development Conference Reservations, 7980 Boeing Court, Vienna, VA 22182-3988; (2) Post-FTS2000 Conference will be held at: Department of Commerce

Auditorium, 100 14th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**  
 Delores W. Sharpe, Contracting Officer,  
 (703) 760-7488 or Darlene Goggins at  
 (703) 760-7487.

**SUPPLEMENTARY INFORMATION:** Technical information will be published at a later date if there is sufficient interest.

Phillip R. Patton,

Branch Chief, Network A Contracts Branch.

[FR Doc. 93-20845 Filed 8-26-93; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

#### Centers for Disease Control and Prevention Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 58 FR 7568, dated February 8, 1993) is amended to reflect the establishment of the Office of Health Communication within the Office of the Director, Centers for Disease Control and Prevention (CDC).

*Section HC-B, Organization and Functions*, is hereby amended as follows:

After the functional statement for the *Office of Public Affairs (HCA2)*, insert the following:

*Office of Health Communication (HCA3)*. The Office of Health Communication (OHC) is located in the Office of the Director, CDC. Its primary mission is to strengthen the science and practice of health communication throughout the agency by providing leadership and assistance to CDC Centers, Institute, and Offices (CIOs). In carrying out its mission, the OHC:

- (1) Provides leadership in the development of CDC principles, strategies, and practices for effective health communication;
- (2) Provides a CDC-wide forum for the discussion, development, and adoption of health communication policies and procedures;
- (3) Promotes, stimulates, conducts, and supports research on topics of CDC-wide interest in the field of health communication;
- (4) Assists CIOs in conducting health communication research in specific



program areas by providing consultation and access to data, expertise, and related services (e.g., marketing and consumer research, formative message development and testing, and analysis of communication channels);

(5) Promotes, stimulates, and supports evaluation of the effort, efficiency, and effectiveness of health communication initiatives;

(6) Assists the CIOs and their constituents in identifying and building needed expertise, state-of-the-art technology, logistical support, and other capacities required to conduct effective health communication;

(7) Assists CIOs and their constituents in the planning, design, implementation, and evaluation of health communication initiatives;

(8) Promotes quality assurance in health communication initiatives;

(9) Systematically captures, assesses, and disseminates information on ongoing research, current trends, and emerging issues in health communication;

(10) Identifies and fosters collaboration with public, non-profit, and private organizations and agencies involved in health communication;

(11) Creates and maintains liaison with CIOs to share information about health communication activities, arrange for related services, and provide opportunities for collaboration across CDC.

Dated: August 16, 1993.

Donna E. Shalala,  
Secretary.

[FR Doc. 93-20722 Filed 8-26-93; 8:45 am]

BILLING CODE 4160-18-M

### Agency for Health Care Policy and Research

#### Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, September 23, from 9 a.m. to 5 p.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on

Friday, September 24, 1993, from 8:30 a.m. to 11:00 a.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Arlington Renaissance, 950 North Stafford Street, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594-1459.

In addition, if sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594-6666 no later than September 3, 1993.

#### SUPPLEMENTARY INFORMATION:

##### I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the activity of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D.; Edward C. Bessey, M.B.A.; Marion F. Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; Joseph T. Curti, M.D.; John W. Danaher, M.D.; David E. Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D., Ph.D.; Walter J. McNerney, M.H.A.; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Louis F. Rossiter, Ph.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio Members. These members are:

Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control

and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

##### II. Agenda

On Thursday, September 23, 1993, the meeting will begin at 9 a.m. with the call to order by the Council Chairman. The Assistant Secretary for Health, Philip R. Lee, M.D., will address the Council. Following the address by the Assistant Secretary will be the Administrator's update on AHCPR activities. Concluding the morning will be a preliminary report from the Technology Assessment Task Force. In the afternoon, the Chairmen of AHCPR study sections will discuss with Council the AHCPR grant review process. AHCPR staff will conclude the meeting with a discussion of AHCPR training activities. The Council will recess at 5 p.m.

On Friday, September 24, 1993, the Council will resume with a closed meeting to review grant applications from 8:30 a.m. to 11 a.m. The meeting will then adjourn at 11 a.m.

Agenda items are subject to change as priorities dictate.

Dated: August 18, 1993.

J. Jarrett Clinton,  
Administrator.

[FR Doc. 93-20834 Filed 8-26-93; 8:45 am]

BILLING CODE 4160-00-U

### Food and Drug Administration

[Docket No. 93N-0069]

#### Robert Shulman; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarment Mr. Robert Shulman, Federal Prison Camp Allenwood, Montgomery, PA 17752, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Mr. Shulman was convicted of felonies under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug



product under the act. Mr. Shulman has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

**EFFECTIVE DATE:** August 27, 1993.

**ADDRESSES:** Application for termination of debarment to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Walter A. Brown, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 22, 1993, the United States District Court for the District of Maryland entered judgment against Mr. Robert Shulman for, in addition to other offenses, one count of obstruction of a Federal agency proceeding and two counts of making false statements to a Federal agency, Federal felony offenses under 18 U.S.C. 1505 and 18 U.S.C. 1001.

Based on these convictions, as well as others, FDA served Mr. Shulman by certified mail on March 22, 1993, a notice proposing to debar him permanently from providing services in any capacity to a person that has an approved or pending drug product application and offering him an opportunity for a hearing on the proposal. The proposal was based on findings, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Shulman did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

**II. Findings and Order**

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Robert Shulman has been convicted of felonies under Federal law (18 U.S.C. 1505 and 18 U.S.C. 1001) for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to

the regulation of a drug product under the act (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Robert Shulman is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective August 27, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Shulman during his period of debarment (21 U.S.C. 335a(c)(1)(B)).

Any person with an approved or pending drug product application who knowingly uses the services of Mr. Shulman in any capacity, during his period of debarment, will be subject to civil money penalties under section 307(a)(6) of the act (21 U.S.C. 335b(a)(6)). If Mr. Shulman, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties under section 307(a)(7) of the act.

Any application by Mr. Shulman for termination of debarment under section 306(d)(4) of the act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. 93N-0069 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 1993.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 93-20786 Filed 8-26-93; 8:45 am]

**BILLING CODE 4160-01-F**

[Docket No. 91P-0176]

**Citizen Petition Requesting Federal Preemption of Certain State and Local Standards Affecting Blood, Blood Components, and Blood Derivatives; Request for Information**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting public comment, from interested

parties, including the States, on a citizen petition filed on behalf of the American Blood Resources Association, American National Red Cross, American Association of Blood Banks, and Council of Community Blood Centers. The petition requests Federal preemption of State and local regulations on donor suitability, testing, and labeling of blood, blood components, and blood derivatives. The petition was dated and filed on May 2, 1991. On October 25, 1991, the Center for Biologics Evaluation and Research issued an interim response to the petitioners. FDA will consider the comments received before responding to the petition.

**DATES:** Submit written comments on the petition by November 26, 1993.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Minor, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

**SUPPLEMENTARY INFORMATION:** FDA received a petition, dated and filed on May 2, 1991, on behalf of the American Blood Resources Association (ABRA), American National Red Cross (ARC), American Association of Blood Banks (AABB), and Council of Community Blood Centers (CCBC) (blood organizations or petitioners). The petition states that it is submitted under sections 351 and 361 of the Public Health Service Act, as amended, 42 U.S.C. 262 and 264, to request that the Commissioner of Food and Drugs issue a regulation or order, or take other appropriate action, to preempt State and local laws and regulations pertaining to: (1) The determination of donor suitability; (2) the testing of blood, blood components, and blood derivatives; and (3) the labeling of blood, blood components, and blood derivatives.

**I. Summary of the Issues and Arguments Raised in the Petition**

*A. Current Practice of Exchanging Needed Products Among Blood Establishments*

In a section titled "Summary of Reasons for Preemption" the petitioners state that blood components and derivatives are essential lifesaving elements of modern health care. They move extensively and continuously in interstate commerce, from blood center



to blood center, from blood center to hospital, from hospital to hospital, from collection center to manufacturers of blood derivatives, and from manufacturers of blood derivatives to treatment centers and hospitals. Many establishments collecting, processing, and distributing blood components and derivatives conduct operations in multiple jurisdictions. The petitioners state that FDA comprehensively regulates the collection, processing, labeling, and distribution of blood components and derivatives. Petitioners argue that State regulation of the same activities is increasing, resulting in a regulatory patchwork that does not demonstrably improve safety and threatens to thwart the goal of providing a safe and adequate blood supply.

#### *B. Obstacles of State and Local Requirements*

In a section titled "Statement of Grounds for Requested Action" the petitioners argue that blood is a national resource and that community self-sufficiency in blood components does not exist. They claim that State action can actually decrease safety, and can jeopardize the blood supply while improving only the perception of safety.

The petitioners argue that FDA has many years of unparalleled medical and scientific expertise in regulating—through the careful application of scientific knowledge and judgment—the complex of blood components and derivatives. No State or local jurisdiction has comparable resources, expertise, or experience. Moreover, they claim that because State and local regulation of blood components and derivatives frequently has significant impact on other jurisdictions, localized action in this area does not meet the test for appropriate local regulation that federalism contemplates. The actions of one jurisdiction may be seized on by others not wanting to be perceived as affording their constituents a lower degree of safety. Because of liability laws, a legal requirement of one local jurisdiction may become part of the "community standard" of another jurisdiction and widely-adopted merely by being a legal requirement, not because it is scientifically valid.

The petitioners state that, without a uniform regulatory scheme, the nation's vital interest in the free flow of blood components and derivatives across State and local borders, as well as between the United States and its foreign trading partners, is in jeopardy. In addition, they assert that State action can actually decrease blood safety by mandating poorly thought-out schemes that may overwhelm the limited resources

available to blood establishments and cause paradoxical outcomes.

#### *C. Benefit of Federal Regulation*

The blood organizations argue that they do not advocate ignoring local concerns. They contend, however, that although principles of federalism require that the National Government normally defer to the legitimate interests of State and local governments, these principles also require that local interests must be subordinate to national interests where the issues are national in scope. They state that the assurance of a safe and adequate supply of blood components and derivatives is just such a national concern. The petitioners assert that because blood is a national resource, the focus for regulatory decisions about the nation's blood component and derivative supply should be national, and that State and local jurisdictions should bring their concerns to the Federal regulatory authorities for consideration rather than promulgating a plethora of conflicting laws. The petitioners provide information, including case law and previous agency action, to support their position that FDA's authority to preempt State and local laws with respect to blood, blood components, and blood products is well-established.

In support of this request, the petitioners also argue that preemption of State and local laws pertaining to donor suitability, product labeling, and testing is necessary to promote Federal objectives. They state that the goals of uniformity, safety, and adequacy of supply are as valid today as when they were set forth in the National Blood Policy (39 FR 32702, September 10, 1974). The petitioners assert that unlike Federal regulation, State and local regulation is not likely to be effective to assure a safe and adequate national supply of blood and its components and derivatives. They claim that by asserting its authority to preempt, FDA can assure that the goals of a safe and adequate blood supply will be met and that U.S. regulations will be consistently in line with prudent and reasonable regulations of its foreign counterparts.

#### *D. Conclusion*

The petitioners argue that the major risk from State and local regulation of donor suitability, product labeling, and testing is that blood components and derivatives will not be readily available where they are needed. They state that such local regulation also diverts scarce and valuable resources into unproductive activities. In addition, they state that unnecessary State regulation is not benign when it comes

to safety, namely, where there is no benefit there is risk of needlessly complicating an already complex system, which can induce life-threatening errors. They claim that it is impossible to quantify the impact of State and local initiatives concerning blood components and derivatives, and that FDA has not required such information in preempting State and local requirements in other areas (e.g., over-the-counter pregnancy warnings, Reye syndrome labeling, and tamper-resistant packaging).

The petitioners state that blood regulation is a matter of compelling national concern, that there is growing national fear over the safety of the blood supply, and therefore that Federal leadership is required. The blood organizations, which represent virtually every aspect of the blood and plasma sectors, both not-for-profit and for-profit, agree that the time has come to halt the proliferation of State and local regulations that frustrate standardization and uniformity and impede the acknowledged Federal objectives of a safe and adequate supply of blood components and blood derivatives. They request that FDA pronounce its intention to preempt in the areas of donor suitability, testing, and labeling of blood components and derivatives.

#### **II. The Executive Order on Federalism (Executive Order 12612)**

Executive Order 12612, which was issued on October 26, 1987, provides direction on the issue of preemption. Executive Order 12612 states, among other things, that agencies formulating and implementing policies are to be guided by certain federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles.

Section 3 of Executive Order 12612 states that, in addition to the fundamental federalism principles set forth in Section 2, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications, including: (1) Encouraging States to develop their own policies to achieve program objectives and to work with appropriate officials in other States; (2) refraining, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, deferring to the States to establish standards; and (3) when national standards are required, consulting with appropriate officials and organizations



representing States in developing those standards.

Section 4 of Executive Order 12612 lists special requirements for preemption, including construing, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

Section 4 also states that, when an executive department or agency foresees the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing States in an effort to avoid such a conflict. An executive department or agency proposing to act through adjudication or rulemaking to preempt State law is to provide all affected States notice and opportunity for appropriate participation in the proceedings.

### III. Request for Comment from Interested Parties Under Executive Order 12612

Regulation of the safety and effectiveness of blood products, as a national resource, has historically involved the collective resources of Federal, State, local, and private sector entities. In effect, the petition requests a reassessment and reallocation of relative responsibilities with regard to donor screening requirements, product labeling, and product testing. While the citizen petition states arguments in favor of such a reallocation, including putatively beneficial uniformity in labeling and a perceived limitation in unnecessary or unscientific standards, arguments exist as well in favor of continuing a mix of Federal, State, local, and private standards. FDA believes that an airing of these issues will ultimately be beneficial to the long-term safety and effectiveness of the blood supply regardless of the ultimate action taken by FDA in response to the petition.

Consistent with Executive Order 12612, and in response to the petition requesting preemption of State laws regarding blood and blood products and labeling, this notice requests information and comments from interested parties on these issues, including the States, its health officials, and other interested parties.

Interested persons may, on or before November 26, 1993, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this notice. 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. The petition, comments received, and Executive Order 12612 may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1993,  
Michael R. Taylor,  
Deputy Commissioner for Policy.  
[FR Doc. 93-20785 Filed 8-26-93; 8:45 am]  
BILLING CODE 4160-01-F

### Health Care Financing Administration [OPA-008-N]

#### Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

**DATES:** The meeting is scheduled for September 13, 1993, from 9 a.m. until 5 p.m. d.s.t. An additional meeting is tentatively scheduled for December 13, 1993.

**ADDRESSES:** The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** John Lanigan, Acting Executive Director, Practicing Physicians Advisory Council, room 425-H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. (202) 690-7874.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), enacted on November 5, 1990, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations

representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration (HCFA) not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Advisory Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Advisory Council by appropriate action before the end of the 2-year term.

The current members are: Gary C. Dennis, M.D., Harvey P. Hanlen, D.O., Kenneth D. Hansen, M.D., Isabel V. Hoverman, M.D., Ramon L. Jimenez, M.D., Jerilyn S. Kaibel, D.O., William D. Kirsch, D.O., Marie G. Kuffner, M.D., David L. Massanari, M.D., Kenton K. Moss, M.D., Susan W. Owens, M.D., Isadore Rosenfeld, M.D., Richard B. Tompkins, M.D., James C. Waites, M.D., and Gary L. Yordy, M.D. The chairperson is Richard B. Tompkins, M.D.

The sixth meeting of the Council will be held on September 13, 1993. The purpose of the meeting will be to discuss and make recommendations on provisions of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66), enacted on August 10, 1993, that affect physicians.

Those individuals or organizations who wish to make 10-minute oral presentations on the above issues must contact the Acting Executive Director to be scheduled. For the name, address, and telephone number of the Acting Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. A written copy of the oral remarks must be presented to the Acting Executive Director at the time of the presentation.

Anyone who is not scheduled to speak may submit written comments to the Acting Executive Director. The



meeting is open to the public but attendance is limited to the space available on a first-come basis.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92-463 (5 U.S.C. App. 2, section 10(a)) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program))

Dated: August 16, 1993.

John P. Lanigan,

Acting Executive Director, Practicing Physicians Advisory Council.

[FR Doc. 93-20921 Filed 8-26-93; 8:45 am]

BILLING CODE 4120-01-P

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 20, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Office on (202) 690-7100.

1. OMAR Quick Launch Physician Survey: Instrument 2: The Use of Corticosteroids in Preterm Labor—New—The National Institute of Child Health and Human Development (NICHD) will conduct surveys of physicians to evaluate practice behavior related to the use of antenatal corticosteroid to improve outcomes in preterm infants, the subject of an upcoming Consensus Development Conference. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 1,335; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.167 hours; *Estimated Annual Burden:* 223 hours.

2. Follow-up of a Cohort Study of Steelworkers Exposed to Sulfuric Acid Mists—New—The population of interest is a cohort of workers exposed to acid mists while working in the pickling areas of three midwestern steel mills. This cohort has been studied previously and the purpose of this data collection is to determine whether laryngeal cancer incidence remains elevated in this cohort. *Respondents:* Individuals or

households; *Number of Respondents:* 621; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.167 hours; *Estimated Annual Burden:* 104 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 23, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-20852 Filed 8-26-93; 8:45 am]

BILLING CODE 4160-17-M

## Social Security Administration

### [Social Security Ruling SSR 93-1]

#### Disability—Workers' Compensation Offset—Offset of Wage Loss Benefits—Florida

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Social Security Ruling.

**SUMMARY:** In accordance with 20 CFR 422.406(b)(1), the Principal Deputy Commissioner of Social Security gives notice of Social Security Ruling 93-1. This Ruling is based on a Department of Health and Human Services Regional Chief Counsel Opinion. For years, Florida's workers' compensation wage loss benefits were not subject to State offset (the reverse offset) because the wage loss benefit was a monthly, not a weekly benefit. SSA, therefore, reduced the Social Security disability insurance benefits due to the individual's receipt of monthly wage loss benefits. In 1989, Florida amended its wage loss benefit statute to substitute "weekly" for "monthly." Consistent with the Social Security Administration's (SSA) long-standing position that by statute and regulation the expansion of an existing, recognized reverse offset law cannot be recognized by SSA, the Regional Chief Counsel advised that, notwithstanding the 1989 amendments, SSA must continue to reduce Social Security disability insurance benefits due to the receipt of wage loss benefits under Florida law.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security

Boulevard, Baltimore, MD 21235, (410) 965-1711.

**SUPPLEMENTARY INFORMATION:** Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the *Federal Register* to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: August 19, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

#### Section 224 (a) and (d) of the Social Security Act (42 U.S.C. 424a (a) and (d)) Disability—Workers' Compensation Offset—Offset of Wage Loss Benefits—Florida

##### 20 CFR 404.408(b)(2)(i)

Section 224 of the Social Security Act requires an offset of disability insurance benefits if the disabled worker receives workers' compensation benefits. By statute, this reduction does not apply if the workers' compensation law or plan provides for a reduction of the workers' compensation benefit if the worker receives disability insurance benefits and the reverse offset law or plan was provided for on February 18, 1981. This is referred to as reverse offset. The Florida workers' compensation law contains a reverse offset plan, for weekly workers' compensation benefits, that was provided for on and prior to February 18, 1981. This reverse offset



law precludes the Social Security Administration's (SSA) offset of disability insurance benefits. The Florida workers' compensation law also provides for monthly wage loss benefits, which SSA can use to offset disability insurance benefits.

In 1989, the Florida wage loss law was amended to substitute "weekly" for "monthly" so as to include wage loss benefits under the Florida reverse offset law. Since this expansion of an existing reverse offset law did not occur until after the statutory 1981 controlling date, SSA does not recognize this as part of the Florida reverse offset law. Therefore, SSA can reduce an individual's disability insurance benefit due to the disabled worker's receipt of wage loss benefits.

The question before the Regional Chief Counsel was whether workers' compensation offset under section 224 of the Social Security Act (the Act) was properly applied to the claimant's wage loss benefits paid under section 440.15(3)(b)(1) of the Florida workers' compensation statutes. Section 224 of the Act requires an offset of disability insurance benefits if the disabled worker is receiving workers' compensation benefits. Section 224(d) provides for "reverse offset" as follows:

The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) [conditions for reduction] under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under section 223 [disability insurance benefit payments], and such law or plan so provided on February 18, 1981.

Section 440.15(9) of the Florida Statutes Annotated contains a reverse offset provision that requires a reduction of the weekly workers' compensation benefit if the worker is receiving disability insurance benefits. When this reverse offset applies, disability insurance benefits are not reduced. Section 440.15(3) of the Florida workers' compensation law contained a provision that paid a monthly wage loss benefit. For years, the position of the Florida Division of Workers' Compensation and, later, of the State courts was that the wage loss benefit was not subject to State offset (the reverse offset) because it was a monthly, not a weekly, benefit. Therefore, SSA reduced the disability insurance benefits due to the individual's receipt of monthly wage loss benefits.

In the Florida laws of 1989 (C.89-289, section 12), section 440.15(3)(b)(1), which provides for wage loss benefits,

was amended to substitute "weekly" for "monthly" throughout the subparagraph. The effective date of the amendment was October 1, 1989. Pursuant to section 224(d) of the Act, quoted above, and our regulation at 20 CFR 404.408(b)(2)(i), this revision of Florida law cannot be recognized by SSA for purposes of removing offset of disability insurance benefits since the amendment became effective after February 18, 1981. This position has been supported by the Office of the General Counsel in analogous situations arising in North Dakota and Washington. The procedures in SSA's operating instructions, DI 52001.080 of the Program Operations Manual System, apply to the offset of Florida wage loss benefits and disability insurance benefits must be offset using the full unreduced wage loss amount.

Although this Ruling involves Florida wage loss benefits, it clearly illustrates SSA's long-standing position that under the statute and regulation noted above the expansion of an existing, recognized reverse offset law after February 18, 1981, cannot be recognized by SSA.

[FR Doc. 93-20847 Filed 8-26-93; 8:45 am]  
BILLING CODE 4190-29-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

[Docket No. N-93-1917; FR-3350-N-45]

### Federal Property Suitable as Facilities To Assist the Homeless

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

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42

U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.



For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force*: John Carr, Realty Specialist, HQ-AFBDA/BDR, Pentagon, Washington, DC 20330-5130; (703) 696-5569; (This is not a toll-free number).

Dated: August 20, 1993.

Jacque M. Lawing,

Deputy Assistant Secretary for Economic Development.

**Title V, Federal Surplus Property Program Federal Register Report for 8/27/93**

**Arizona—Williams Air Force Base**

Williams Air Force Base is located in Mesa, Arizona, 85240-5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

**Suitable/Available Properties**

Property Number: 199210096

Type Facility: Housing—700 units of military family housing; 1-story with 2 to 5 bedrooms.

Property Number: 199210097

Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3-story structures including dorms and lodging.

Property Number: 199210098

Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel, a gate house, a post office and an education center.

Property Number: 199210099

Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreation centers, theater, commissary and stores.

Property Numbers: 199210100-199210101

Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp.

Property Number: 199210102

Type Facility: Medical Facilities—6 buildings; 1-story block and concrete structures including a hospital, clinics and pharmacy.

Property Number: 199210103

Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures.

Property Number: 199210104

Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities.

Property Number: 199210105

Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs.

Property Number: 199210106

Type Facility: Base Support and Flight Maintenance Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops.

Property Number: 199210107

Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures.

**Arkansas—Eaker Air Force Base**

Eaker Air Force Base is located in Blytheville, Arkansas 72317-5000. All

the properties are excess to the needs of the Air Force. Properties shown below as suitable/available may be available for use to assist the homeless.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

**Suitable/Available Properties**

Property Numbers: 199210046-199210047

Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block, masonry or metal/brick construction.

Property Numbers: 199210048-199210055

Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.

Property Number: 199210073

Type Facility: Commissary—1 building; 38,575 sq. ft., one story concrete block/metal commissary.

Property Number: 199210075

Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer.

**Suitable/Unavailable**

Property Numbers: 199210040-199210042

Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25 four-unit buildings with two story four bedroom units; four playgrounds.

Property Number: 199210044

Type Facility: Security Related Facilities—13 buildings; 30 to 2400 sq. ft., 1 story; metal, concrete block or wood frame; includes traffic check houses, kennels, guard towers, alert shelters.

Property Number: 199210045

Type Facility: Office/administration—26 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction.

Property Numbers: 199210056



Type Facility: Warehouses/multi-use buildings—36; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities.

Property Numbers: 199210057–199210059

Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.

Property Numbers: 199210060–199210062

Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction.

Property Numbers: 199210063–199210065

Type Facility: Stores and services—3 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store.

Property Number: 199210066

Type Facility: Airfield related buildings—9; 96 to 49,000 sq. ft.; shingle, metal or concrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers.

Property Number: 199210068

Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings.

Property Number: 199210069

Type Facility: Fuels/related storage facilities—33 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage.

Property Number: 199210070

Type Facility: Hazardous storage buildings—4; 96 to 3,000 sq. ft.; one story metal structures.

Property Number: 199210071

Type Facility: Munitions facilities—10 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines.

Property Numbers: 199210076–199210077

Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio-visual photo lab.

Property Number: 199210078

Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions.

Property Number: 199210079

Type Facility: Land; 1,962 acres; restrictive agricultural lease.

Property Number: 199210074

Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame.

Property Number: 199210072

Type Facility: Cold Storage—Building 435; 3,195 sq. ft., 1 story concrete block frame.

#### Unsuitable Properties

Property Number: 199210067

Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures.

Property Number: 199210043

Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies.

#### California—George Air Force Base

George Air Force Base is located in San Bernardino, California, 92394–5000. All the properties are excess to the needs of the Air Force.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

#### Suitable/Unavailable Properties

Property Numbers: 199210001–199210420

Type Facility: Housing—400 buildings with a total of 1,525 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos

Property Numbers: 199210506–199210547

Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos

Property Numbers: 199210421–199210473

Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos

Property Numbers: 199210474–199210505

Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft

center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos

Property Numbers: 199210548–199210587

Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos

Property Numbers: 199210588–199210608

Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos

Property Numbers: 199210609–199210618

Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos

Property Numbers: 199210619–199210630

Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos

Property Numbers: 199210631–199210632

Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos

Property Number: 199210633

Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos

Property Numbers: 199210634–199210635

Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos

Property Numbers: 199210636–199210638

Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos

Property Numbers: 199210639–199210645

Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos

Property Numbers: 199210646–199210655

Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos

Property Numbers: 199210656–199210666



Type Facility: Communications/  
electronic—11 buildings; concrete  
block and wood; 1 story shops and  
sheds; 108 sq. ft. to 10,200 sq. ft.;  
possible asbestos

Property Numbers: 199120667–  
199120678

Type Facility: Warehouses—12  
buildings; 1124 sq. ft. to 70,000 sq. ft.;  
wood, concrete, and concrete block;  
possible asbestos

#### Unsuitable Properties

Property Number: 199120679

Type Facility: Small arms

Reason: Within 2000 ft. of flammable or  
explosive material

Property Numbers: 199120680–  
199120687

Type Facility: Hazardous storage  
facilities—8 buildings

Reason: Within 2000 ft. of flammable or  
explosive material

Property Numbers: 199120688–  
199120713

Type Facility: Explosives and munitions  
facilities—26 buildings

Reason: Within 2000 ft. of flammable or  
explosive materials

Property Numbers: 199120714–  
199120732

Type Facility: Fuel facilities—19  
structures

Reason: Within 2000 ft. of flammable or  
explosive materials

#### California—Mather Air Force Base

Mather Air Force Base is located in  
Sacramento County, California, 95655–  
5000. All the properties will be excess  
to the needs of the Air Force on or about  
September 30, 1993.

The Base consists of approximately  
5715 acres, 315 Government-owned  
buildings and 1271 housing units that  
have been reviewed by HUD for  
suitability for use to assist the homeless.  
The properties that HUD has  
determined suitable which are no longer  
available include various types of  
housing; office and administrative  
buildings; recreational, maintenance,  
and storage facilities; and other more  
specialized structures.

#### Suitable/Unavailable Properties

Property Number: 199210022

Type Facility: Office/Administration—  
60 buildings; one, two and three story  
structures; presence of asbestos.

Property Number: 199210024

Type Facility: Aircraft and Airport  
Related Facilities—33 buildings; one  
to two story structures including  
hangars, storage facilities and  
maintenance shops; presence of  
asbestos.

Property Number: 199210025

Type Facility: Maintenance and  
Engineering Facilities—36 buildings;  
one story structures including storage,  
shop and maintenance buildings;  
presence of asbestos.

Property Number: 199210027

Type Facility: Stores and Services—7  
buildings; one story structures  
including stores, service station  
exchange and cold storage building;  
presence of asbestos.

Property Number: 199210028

Type Facility: Chapels—2 buildings;  
one story concrete block and masonry  
concrete structures; presence of  
asbestos.

Property Number: 199210029

Type Facility: Fire Facilities—2 fire  
facilities and 2 fire stations; presence  
of asbestos.

Property Number: 199210030

Type Facility: Audio Visual—3  
buildings; one story photo lab and  
training aid shops; presence of  
asbestos.

Property Numbers: 199210017–  
199210020

Type Facility: Housing—207 buildings/  
414 units Wherry duplexes (two to  
three bedrooms); 857 family houses  
(one to four bedrooms); buildings  
have reinforced concrete block, wood  
and stucco frame construction;  
presence of asbestos.

Property Number: 199210021

Type Facility: Temporary Living  
Quarters—18 buildings; one, two, and  
three story wood, concrete block and  
stucco structures; presence of  
asbestos.

Property Number: 199210023

Type Facility: Recreation—32 facilities  
including theater, gymnasium, library,  
bowling alley, recreation center, arts  
and crafts center, youth center, pools,  
bath houses, museum buildings;  
presence of asbestos.

Property Number: 199210026

Type Facility: Training Facilities—15  
buildings; one to two story concrete,  
wood and metal classroom/education  
buildings; presence of asbestos.

Property Number: 199210031

Type Facility: Miscellaneous—6  
buildings; one story child care  
centers, correction facility, dining and  
mess halls; presence of asbestos.

Property Number: 199210032

Type Facility: Storage Facilities—61  
buildings; one story metal, steel,  
wood or concrete storage buildings or  
sheds; presence of asbestos.

Property Number: 199210033

Type Facility: Warehouses—7 buildings;  
one to two story structures; presence  
of asbestos.

Property Number: 199210034

Type Facility: Vehicle Shops—6  
buildings; one story concrete block,  
wood, steel frame and metal shops;  
presence of asbestos.

Property Number: 199210035

Type Facility: Traffic Check House—1  
building; two story concrete block  
structure.

Property Number: 199210036

Type Facility: Fuel Facilities—8  
buildings; one story structures.

Property Number: 199210037

Type Facility: Explosives and Munitions  
Facilities—5 buildings; one story  
concrete or concrete block storage  
structures.

Property Number: 199210038

Type Facility: Hazardous Storage  
Facilities—11 buildings; one story  
metal storage structures.

Property Number: 199210039

Type Facility: Land—Recreation Areas  
and Airfield Properties including  
softball/football/soccer fields, running  
track, riding stables, golf course,  
taxiway and runways, (approximately  
5716 acres).

#### California—Norton Air Force Base

Norton Air Force Base is located in  
San Bernardino, California, 92409. All  
the properties will be excess to the  
needs of the Air Force on or about  
September 30, 1994. The Air Force has  
advised HUD that some properties may  
be available for interim lease for use to  
assist the homeless prior to that date.

The Base covers approximately 2,339  
acres, 132 Government owned buildings  
that have been reviewed by HUD for  
suitability for use to assist the homeless.  
The properties that HUD has  
determined suitable include dormitory  
housing; office and administrative  
buildings; recreational, maintenance,  
and storage facilities; and other more  
specialized structures.

#### Suitable/Available Properties

Property Number: 199320048

Type Facility: Dormitories—23  
buildings; ranging in size from 11,520  
sq. ft. to 25,723 sq. ft., 1-story concrete  
block.

Property Number: 199320049

Type Facility: Administrative Bldgs.—7  
buildings; ranging in size from 1750  
sq. ft. to 261,700 sq. ft., 1-story  
concrete block including offices,  
admin. and Hq. maint. facilities.

Property Number: 199320050

Type Facility: Training Facility—Bldg.  
730; 29,380 sq. ft., 1-story concrete  
block classroom (NCO Academy).

Property Number: 199320051

Type Facility: Warehouses—39  
buildings; ranging in size from 9000



sq. ft. to 293,574 sq. ft., 1-story concrete block warehouses.

Property Number: 199320052

Type Facility: Commercial Bldgs.—23 buildings; ranging in size from 400 sq. ft. to 100,581 sq. ft., 1-story concrete block including stores, clinics, child care centers, dining facilities and fire station.

Property Number: 199320053

Type Facility: Maintenance Facilities—5 buildings; ranging in size from 2942 sq. ft. to 625,145 sq. ft., 1-story concrete block including maintenance, storage and headquarters facilities.

Property Number: 199320054

Type Facility: Recreation Bldgs.—7 buildings; ranging in size from 3000 sq. ft. to 25,358 sq. ft., 1-story concrete block including library, golf bldgs., gym, and recreation/bowling/youth centers.

Property Number: 199320055

Type Facility: Recreation Areas—land; 200 acres including golf course, ballfields, etc.

NOTE: Property Number 199320047—Housing Units were inadvertently reported. The housing will be retained for military use. The units will serve as an overflow for March AFB personnel.

Colorado—Lowry Air Force Base

Lowry Air Force Base is located in Denver, Colorado 80230-5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,006 acres, 181 government-owned buildings and 867 units of family housing. The properties that HUD has determined suitable and which are available include various types of housing; community and recreation facilities; administration and training buildings; storage/warehouses; and other more specialized structures.

#### Suitable/Available Properties

Property Number: 189010254

Type Facility: Land—NTMU—Partial Area; west of aspen terrace housing area; approx. 20 acres; sloping parts in the area.

Property Number: 199320001-199320009

Type Facility: Housing—867 units; 1, 2, 4 & 8 unit bldgs. and storage sheds & vehicle garages; 1 to 4 bedrooms; brick, wood w/metal siding frame;

possible asbestos; some may need rehab; 192 to 14617 sq. ft.

Property Number: 199320010

Type Facility: Housing—26 dormitories; 4382 to 188923 sq. ft.; brick or wood frame; 1 to 3 story; possible asbestos; some may need rehab; includes officer's quarters, dorm housing, motels and hotel housing.

Property Number: 199320012

Type Facility: Community/Recreation—49 facilities; includes playgrounds; running track; soccer, baseball & softball fields; tennis and basketball courts, and golf course.

Property Number: 199320013

Type Facility: Recreational—22 facilities; brick, wood or cinderblock frame; some may need rehab; includes gyms, theater, bowling alleys, youth centers, swimming pools, bath houses, museum.

Property Number: 199320014

Type Facility: Administration—26 buildings; 1143 to 337588 sq. ft.; wood, brick, metal or cinderblock frame; some may need rehab; possible asbestos; includes correctional facility, headquarters bldg., security operations, traffic management and admin services.

Property Number: 199320015

Type Facility: Training—32 facilities; 1026 to 97442 sq. ft., brick, metal or cinderblock frame; 1 to 4 story; includes technical training labs, TV studio, classrooms.

Property Number: 199320016

Type Facility: Commercial—24 buildings; 64 to 84860 sq. ft.; 1 & 2 story; some may need rehab; possible asbestos; brick, wood or metal frame; includes stores, child care centers, medical clinics, chapels & car garages.

Property Number: 199320017

Type Facility: Industrial—21 facilities; 757 to 37832 sq. ft.; metal, brick, wood or cinderblock frame; possible asbestos, some may need rehab; includes vehicle maintenance, training aid, BE maintenance, and industrial bldgs.

Property Number: 199320018-199320019

Type Facility: Storage/Warehouses—46 facilities; 169 to 50363 sq. ft.; wood, brick, metal or cinderblock frame; some may need rehab; possible asbestos; includes cold storage, housing support, warehouses, commissary, clothing stores, covered storage.

#### Unsuitable Properties

Property Number: 199320011

Type Facility: Dormitories (2)—Buildings 410 and 414; extensive deterioration.

Property Number: 199320020-199320021

Type Facility: Hazard Storage/Warehouses—6 facilities; extensive deterioration.

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 585 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

#### Suitable/Unavailable Properties

Property Number: 199210139

Type Facility: Housing—585 houses including off-base Chapman Courts with 1 to 8 units, brick and wood structure, possible asbestos.

Property Number: 199210140

Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos.

Property Number: 199210141

Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos.

Property Number: 199210142

Type Facility: Storage/Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs.

Property Number: 199210143

Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos.

Property Number: 199210144

Type Facility: Engine Test Cells/Warehouse—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos.

Property Number: 199210145

Type Facility: Gas Stations—2 buildings; 1-story gas stations.

Property Number: 199210146

Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos.

Property Number: 199210147

Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch



exchanges and 1 commissary, possible asbestos.

Property Number: 199210148

Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos.

Property Number: 199210149

Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos.

Property Number: 199210150

Type Facility: Recreation—48 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range.

Property Number: 199210152

Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos.

Property Number: 199210153

Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/wood band center, needs rehab.

Property Number: 189010232,

189010255, 189010259—189010260

Type Facility: Miscellaneous Bldgs.—4 buildings including training facility, jail, pump house and bath house.

#### Unsuitable Properties

Property Number: 189010227—189010231

Type Facility: Waste Treatment Facilities

#### Indiana—Grissom Air Force Base

Grissom Air Force Base is located in north central Indiana, approximately 70 miles from Indianapolis. All properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of various parcels of land, 107 Government-owned buildings and 1,110 units of housing. The properties that HUD has determined suitable and which are available include various types of housing; administrative buildings; maintenance and storage facilities; recreational facilities and other more specialized structures.

#### Suitable/Available Properties

Property Number: 199330001

Type Facility: Land—13 parcels totalling 839 acres; various uses including farm land, housing area,

saddle club barns and grazing, etc., easement restrictions.

Property Number: 199330002—199330006

Type Facility: Housing—606 buildings; various square feet; 2 to 4 bedrooms; 1 to 6 unit bldgs., some w/garages or carports; includes dormitories, multifamily residences, and temporary living facilities.

Property Number: 199330007—199330008, 199330010

Type Facility: Administration/Communication—14 buildings; 1226 to 55797 sq. ft.; presence of asbestos; 3 located near airport clear zone; includes admin. and communication facilities, law center and reserved forces training.

Property Number: 199330009

Type Facility: Support Facilities—22 buildings; 784 to 55267 sq. ft.; presence of asbestos; 4 located near airport clear zone; includes commissary, snack bar, library, animal clinic, chapel, credit union, classrooms, base exchange, etc.

Property Number: 199330011

Type Facility: Maintenance—12 facilities; 323 to 130,492 sq. ft.; presence of asbestos; includes sheds, hangars, BE maintenance, covered storage.

Property Number: 199330012

Type Facility: Storage—11 facilities; 587 to 21,214 sq. ft.; presence of asbestos; 2 located near airport clear zone; includes warehouses, open storage.

Property Number: 199330013

Type Facility: Medical—2 buildings; 5573 to 58291 sq. ft.; presence of asbestos; includes dental clinic and medical clinic.

Property Number: 199330014—199330015

Type Facility: Recreational—23 facilities; includes bowling, swimming pool, golf clubhouse and storage, softball/baseball fields, tennis courts, golf course, range and recreation courts.

#### Unsuitable Properties

Property Number: 199330016

Type Facility: Operations—6 facilities; within an airport runway.

#### Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311-5000. All the properties are excess to the needs of the Air Force.

The base covers 2,282 acres and contains 568 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include

one and two story family housing; office and administration buildings; and land. Other properties include recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

#### Suitable/Available Properties

Property Numbers: 199210080—199210081

Type Facility: Housing—286 buildings with 568 dwelling units; one and two story; wood or masonry frame; 1,190 to 6,701 sq. ft.

Property Number: 199210082

Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame; presence of asbestos in several structures.

Property Number: 199210094

Type Facility: Land, airfield, runways—25 parcels; 10 to 398,099 square yards; concrete or asphalt.

#### Suitable/Unavailable Properties

Property Numbers: 199210083—199210084

Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, theatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures.

Property Number: 199210085

Type Facility: Dorms and dining areas—14 buildings; 3,902 to 25,715 sq. ft.; brick or masonry frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall.

Property Number: 199210086

Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structures; includes classrooms, child care center, school, education office and field training facility.

Property Number: 199210087

Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital.

Property Number: 199210088

Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mall, photo lab, post office, service station and base package store.



Property Number: 199210089  
 Type Facility: Storage/Warehouses—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to 60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures.

Property Number: 199210090  
 Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures.

Property Number: 199210091  
 Type Facility: Airfield related facilities—36 buildings including vehicle fuel station, petroleum operations building, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures.

Property Number: 199210092  
 Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos.

Property Number: 199210093  
 Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame.

#### Unsuitable Properties

Property Number: 199210095  
 Type Facility: Fuel storage containers—14 hazardous storage containers.

#### Maine—Loring Air Force Base

Loring Air Force Base is located in Limestone, Maine 04736. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 8,702 acres, 163 government-owned buildings, and 598 family housing units. The properties that HUD has determined suitable and which are available include various types of housing; admin/community support; vehicle maintenance/storage; weapons storage area; and other more specialized structures.

#### Suitable/Available Properties

Property Numbers: 189010590–189010605  
 Type Facility: Family Housing Annex—16 buildings; 1116 sq. ft.; 1 story

frame residences; fuel tanks removed; sewage line need repairs.

Property Numbers: 199320033–199320036

Type Facility: Housing—Wherry, Capehart, and Family Housing residences and officer's quarters; 1420 to 38058 sq. ft.; aluminum, wood and shingle frame; 1 to 3 story.

Property Number: 199320037  
 Type Facility: Housing Garages—117 buildings; wood or cedar frame, 1 story, various sq. ft.

Property Numbers: 199320038, 199320040

Type Facility: Vehicle Maintenance/Storage—30 buildings; wood, metal or concrete structures, includes storage and maintenance facilities; vehicle maintenance, dry cleaners, auto shop, and water supply.

Property Number: 199320039  
 Type Facility: Admin/Community Support—42 buildings; 900 to 145877 sq. ft.; 1 to 3 story; brick, concrete or wood frame; includes chapel, post office, dining hall library, child care centers, theater, pool.

Property Number: 199320041  
 Type Facility: Nose Docks/Hangars—59 facilities; concrete, metal or brick structures; includes fuel bldgs., pump stations, vehicle parking, storage sheds and buildings, security operations.

Property Number: 199320042  
 Type Facility: Flightline Support—22 facilities; concrete, metal, wood, brick structures; includes fire stations, correctional facility, avionics shop, maintenance shop, vehicle parking, utility vault.

Property Number: 199320043  
 Type Facility: Weapons Storage Area—86 buildings; concrete, metal, or brick structures; includes inspection bldgs., igloos storage, munitions storage, warehouses, police bldg., and storage magazines.

Property Number: 199320045  
 Type Facility: Land—On Base; 5233 acres of which 3583 is unimproved; improved land includes aprons, roads, runways, parking, etc.

Property Number: 199320046  
 Type Facility: Land—Off Base; 4517 acres of which 4047 is unimproved; improved land includes roads, runways, parking, housing, etc.

#### Unsuitable Properties

Property Number: 199320044  
 Type Facility: 7 Water/Waste Facilities  
 Michigan—Wurtsmith Air Force Base

Wurtsmith Air Force Base is located in Oscoda, Michigan 48753. All the

properties are excess to the needs of the Air Force. Properties shown below as suitable/available may be available for interim lease for use to assist the homeless.

The base consists of approx. 5,221 acres with 62 government-owned buildings and 1,349 units of housing. The suitable/available properties include various types of housing; office buildings; recreational facilities; dining and child care facilities; stores; warehouses and other more specialized structures.

#### Suitable/Available Properties

Property Numbers: 199240001–199240005

Type Facility: Housing—1,349 units and 13 dormitories; 1, 2, 4, 6, 7 and 8 unit buildings; 1073 to 90501 sq. ft.

Property Numbers: 199240006–199240007, 199240015–199240018, 199240022–199240025

Type Facility: Recreational—18 facilities; includes swim bath house; recreation center; library; bowling alley; running track; softball, baseball, football, and soccer fields; theatre.

Property Number: 199240008  
 Type Facility: Dining—3 buildings; 13388 to 15062 sq. ft.; includes open mess.

Property Number: 199240009  
 Type Facility: Stores—4 buildings; 4208 to 40701 sq. ft.; includes sales store; service outlet exchange; exchange branch; and base package store.

Property Number: 199240010  
 Type Facility: Warehouses—4; 7856 to 104213 sq. ft.; includes commissary; supply and equipment base; and traffic facility.

Property Numbers: 199240011, 199240014, 199240021  
 Type Facility: Miscellaneous—11 buildings; includes storage facilities; vehicle maintenance shops; arts & crafts center; radar building.

Property Numbers: 199240012–199240013; 199240020  
 Type Facility: Offices—15 buildings; includes admin offices; child care centers; education facility; headquarters group; family housing management offices; environmental health.

Property Number: 199240019  
 Type Facility: Chapel—19977 sq. ft.; roof leaks.

Property Number: 199240026  
 Type Facility: Air Force Land—56 acres; portion located in airport runway area.



**Missouri—Richards-Gebaur Air Reserve Station**

Richards-Gebaur Air Reserve Station is located in Kansas City, Missouri, 64147. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base is approximately 906 acres with 69 government-owned buildings. The properties that HUD has determined suitable and which are available include office buildings, recreation facilities, dorm housing, medical clinics, community support buildings, storage and maintenance facilities.

**Suitable/Available Properties**

- Property Number: 199320022  
Type Facility: Facility 918; 68767 sq. ft., 1 story concrete block; most recent use—aircraft hangar.
- Property Number: 199320023  
Type Facility: Dormitories—3 buildings (#243, 250 & 252); 9722 to 9739 sq. ft.; 2 story wood frame.
- Property Number: 199320024  
Type Facility: Mess Hall—Facility 248; 25536 sq. ft., 2 story concrete block/wood frame.
- Property Number: 199320025  
Type Facility: Medical Clinics—2 buildings (#601 & 604); 4541 & 9099 sq. ft.; 1 story concrete block/wood frame.
- Property Number: 199320026  
Type Facility: Offices—18 buildings; 856 to 67816 sq. ft.; 1 & 2 story; wood, concrete block, prefab steel or corrugated metal; includes office clinics, base exchange, offices, office maintenance shop.
- Property Number: 199320027  
Type Facility: Recreation—2 facilities; 1083 & 1624 sq. ft.; 1 story wood/steel frame; includes pool bath house and base park shelter house.
- Property Number: 199320028  
Type Facility: Facility 1049; 611 sq. ft., 1 story concrete block most recent use—office/storage/small arms range.
- Property Number: 199320029  
Type Facility: Facility 924; 569 sq. ft.; 1 story wood frame; most recent use—grounds shop.
- Property Number: 199320030  
Type Facility: Community Support—3 facilities; 308 to 10417 sq. ft.; wood and concrete block; includes fire station; communications support, 7 story control tower.
- Property Number: 199320031

Type Facility: Maintenance Shops/Hangars—10 facilities; 1812 to 23404 sq. ft., 1 story corrugated metal or concrete block.

Property Number: 199320032  
Type Facility: Storage—28 facilities; 141 to 97400 sq. ft., wood, concrete block or steel beams; includes covered open storage, office/storage and sheds.

**New Hampshire—Pease Air Force Base**

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base.

**Suitable/Unavailable Properties**

- Property Number: 189040321–189040323  
Type Facility: 2 open mess and 1 dining hall
- Property Number: 189040326  
Type Facility: 1 bachelor quarters buildings
- Property Number: 189040327  
Type Facility: Hospital heat plant
- Property Number: 189040328  
Type Facility: Hospital
- Property Number: 189040330–189040332  
Type Facility: 3 training facilities
- Property Number: 189040333–189040334  
Type Facility: 2 child care facilities
- Property Number: 189040335  
Type Facility: Fire station
- Property Number: 189040059–189040148, 189040304–189040319  
Type Facility: 106 4-unit residences
- Property Number: 189040352  
Type Facility: 1 chapel
- Property Number: 189040387–189040394  
Type Facility: 8 dormitories
- Property Number: 189040395–189040404  
Type Facility: 10 residences with detached garage
- Property Number: 189040405–189040467  
Type Facility: 63 2-unit residences with detached garage
- Property Number: 189040468–189040471  
Type Facility: 4 6-unit residences with attached garage
- Property Number: 189040472–189040561  
Type Facility: 90 detached housing storage sheds

- Property Number: 189040737–189040740  
Type Facility: 4 recreational facilities
- Property Number: 189040763–189040768, 189040770–189040771  
Type Facility: 9 administrative facilities
- Property Number: 189040774–189040775, 189040777–189040778, 189040787  
Type Facility: 5 miscellaneous buildings used for offices, laboratory, storage, maintenance, and other purposes
- Property Number: 189010535  
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive

**Ohio—Rickenbacker Air National Guard**

Rickenbacker Air National Guard Base is located eight miles southeast of Columbus, Ohio. Portions of the base were disposed of by base closures in the past. The National Guard is now occupying the base. The remaining portion consist of 24 buildings and related acreage. Properties shown below as suitable/available are available for interim lease for use to assist the homeless. The Base is scheduled to close on or about September 30, 1994.

**Suitable/Available Properties**

- Property Number: 199330019  
Type Facility: Bldg. 812; 13,988 sq. ft.; 1 story cinderblock/brick frame; asbestos present; secured area w/alternate access.
- Property Number: 199330021  
Type Facility: Recreational—4 facilities; secured area w/alternate access; bldgs. need repairs; includes swimming pools, bathhouse and consolidated club.

**Unsuitable Properties**

- Property Number: 199330017  
Type Facility: Gym—within 2,000 feet from flammable or explosive material. Storage tanks store JP-4 and has been identified as a contamination site.
- Property Number: 199330018  
Type Facility: Office/Dorms—16 buildings; secured area and within 2,000 feet from flammable or explosive material.
- Property Number: 199330020  
Type Facility: Bldg. 856—secured area.
- Property Number: 199330022  
Type Facility: Offices—2 buildings; secured area; within airport runway; and 2,000 feet from flammable or explosive material.

**South Carolina—Myrtle Beach Air Force Base**

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties are



excess to the needs of the Air Force. Properties shown below as suitable/available are available for interim lease for use to assist the homeless.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

#### Suitable/Available Properties

Property Number: 199210001

Type Facility: Housing—448 buildings with a total of 800 dwelling units; two, three, and four bedrooms single family dwellings and duplexes with attached carports.

Property Number: 199210002

Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures.

Property Number: 199210003

Type Facility: Miscellaneous—12 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall.

Property Number: 199210005

Type Facility: Office/Administration—44 buildings; one to two story modular, block, wood and brick structures.

Property Numbers: 199210006–199210007

Type Facility: Recreation—12 buildings and land including bath houses, bowling center, gymnasium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground (golf course bldgs. are unavailable—leased to local community).

Property Number: 199210009

Type Facility: Utility Type Facilities—36 buildings; one story structures including warehouses, shops and sheds.

Property Number: 199210010

Type Facility: Security—3 police buildings; one story masonry structures including a jail.

Property Number: 199210011

Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures.

Property Numbers: 199210014–199210015

Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest.

#### Suitable/Unavailable Properties

Property Number: 199210004

Type Facility: Six one story medical support buildings.

Property Number: 199210008

Type Facility: Golf course and driving range.

Property Numbers: 199210012–199210013

Type Facility: Airfield and Related Properties—15 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons.

#### Unsuitable Properties

Property Number: 199210016

Type Facility: Small Arms Building  
Reason: Extensive Deterioration

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing.

#### Suitable/Available Properties

Property Numbers: 199210108–199210122

Type Facility: Housing—352 military family residences; 1 and 2-story wood frame, concrete and brick/wood buildings.

Texas—Bergstrom Air Force Base

The properties reported below for Bergstrom Air Force Base are located in Austin, Texas 78743–5000. The remaining Base properties are not subject to Title V requirements since the Base reverts back to the City.

#### Unsuitable Properties

Property Number: 199310003

Type Facility: Building (off-site installation); extensive deterioration

Property Number: 199310004

Type Facility: Ammo Storage—11 buildings; within 2,000 feet of flammable or explosive material

Property Number: 199310001

Type Facility: Land—40.50 acres; within airport runway clear zone

Property Number: 199310002

Type Facility: Land—46.27 acres; within airport runway clear zone

[FR Doc. 93–20636 Filed 8–26–93; 8:45 a.m.]

BILLING CODE 4210-29-F

## DEPARTMENT OF INTERIOR

### Fish and Wildlife Service

#### Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Proposed Lake Pointe Development, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

**SUMMARY:** Southwest Travis County, LTD (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act. The Applicant has been assigned permit Number PRT-782186. The requested permit, which is for a period not to exceed 15 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of an operation of a commercial and residential development on a 496 acre tract in Austin, Travis County, Texas.

The Service has prepared a draft Environmental Assessment (EA) for the incidental take permit application. A determination of jeopardy to the species or a Finding of no Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and draft EA should be received within 30 days of the date of this publication.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing the Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, suite 407, Austin, Texas 78701. Persons wishing to review the draft EA may obtain a copy by contacting Mr. Bryan Arroyo, Austin Ecological Services Field Office. Documents will be available by written request for public inspection, by appointment, during normal business



hours at the Austin Ecological Services Field Office (8 to 4:30). Written data or comments concerning the application and draft EA should be submitted to Mr. Sam Hamilton, State Administrator, Austin Ecological Services Field Office. Please refer to Permit Number PRT-782186 when submitting comments. Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, suite 407, Austin, Texas 78701, phone (512/482-5436).

**FOR FURTHER INFORMATION CONTACT:**

Mr. Bryan Arroyo at the above Austin Ecological Services Field Office address.

**SUPPLEMENTARY INFORMATION:** Section 9, of the Act prohibits the "taking" of endangered species, including the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to "Take" endangered wildlife species if such taking is incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a commercial and residential development located on the southwest side of Austin near the intersection of Farm to Market Road 2244 and State Highway 71 in Travis County, Texas. The development will occupy approximately 354 acres with the remaining 142 acres proposed as conservation areas. These activities will permanently eliminate about 80 acres of occupied and/or potential endangered species habitat. The Applicant proposed to mitigate the incidental take via dedicating 142 acres for an on-site preserve, conducting golden-cheeked warbler monitoring studies, establishing an escrow fund of \$50,000 to fund a golden-cheeked warbler biological study within Travis County, and constructing and maintaining a fence between the proposed development and the portion of the open space set aside for the golden-cheeked warbler.

The Applicant considered four alternatives but rejected them because they were not economically viable.

**James A. Young,**

*Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Southwest Region (2), Albuquerque, New Mexico.*

[FR Doc. 93-20825 Filed 8-26-93; 8:45 am]

BILLING CODE 4310-55-M

**Findings, Conclusion, and Recommendations of the Intentional Introductions Policy Review Available**

**AGENCY:** Department of the Interior, Fish and Wildlife Service.

**ACTION:** Notice of document availability.

**SUMMARY:** This notice announces the immediate availability of a proposed report to Congress on the "Findings, Conclusions, and Recommendations of the Intentional Introductions Policy Review" developed by the federal interagency Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

**DATES:** Comments on the proposed report should be received on or before October 25, 1993.

**ADDRESSES:** Written responses and requests for copies of the proposed report should be mailed to: Sharon Gross, ANS Task Force Coordinator, U.S. Fish and Wildlife Service (ARLSQ 820), U.S. Department of Interior, 1849 C Street, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Gross at (703) 358-1718.

**SUPPLEMENTARY INFORMATION:** The ANS Task Force is co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The proposed report presents background information on the Act and review process, current uses of and risks associated with nonindigenous aquatic species, and recommendations for reducing the risk of adverse consequences associated with intentional introductions of aquatic organisms. The ANS Task Force emphasizes education, cooperation, and accountability. Recommendations address support for education, extension, and research; improvements in the implementation of existing authorities; a permitting system; consultations on introductions with potential interjurisdictional effects, and codes of good business practices.

Dated: August 23, 1993.

**Noreen Clough,**

*Acting Co-Chair, ANS Task Force, Acting Assistant Director—Fisheries.*

[FR Doc. 93-20787 Filed 8-26-93; 8:45 am]

BILLING CODE 4310-55-M

**Bureau of Land Management**

[CO-050-4320-01]

**Canon City District Grazing Advisory Board Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 10 a.m. Tuesday, September 21, 1993 at the Bureau of Land Management, 1921 State Ave., Alamosa, Colorado, and at 8:30 a.m. Wednesday, September 22 at the Alamosa Inn, 1901 Main, Alamosa, Colorado.

The purpose of this meeting will be:

1. Discussion of proposed Range Improvement projects.
2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.
3. Discuss Range Reform in the Bureau of Land Management.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public, with a public comment period at 1 p.m. on Wednesday, September 22. Any member of the public may file with the Board a written statement concerning matters to be discussed at the meeting. September 21 will include a visit to segments of the Rio Grande, where we will discuss riparian and ecosystem management. The Board will leave from the BLM office at 10 a.m. and return at approximately 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275-0631.

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 93-20792 Filed 8-26-93; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-040-4333-03]

**Livestock Grazing Notice and Establishment of Supplementary Rules for the Hot Well Dunes Recreation Area, AZ**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decisions and establishment of supplementary rules. Livestock grazing notice. This announcement constitutes an official notice of livestock closure for the lands in the Hot Well Dunes Recreation Area. BLM will be responsible for



maintenance of the boundary fence around the area. Establishment of supplementary rules.

**SUMMARY:** The purpose of these supplementary rules is to provide for the protection of persons, property, and public lands and resources. The Hot Well Dunes Recreation Area is the area of consideration for the application of these supplementary rules. In addition to the regulations contained in 43 CFR 8365.2 the following rules will be applied to the area.

1. **Vehicle Restricted Area**—For the safety and enjoyment of bathers, vehicles will not be allowed in the area immediately around the tubs and restroom. This area is closed to all motor vehicles and will be delineated with post and cable and will also be signed.

2. **Trapping**—Trapping is prohibited, except for health and public safety or administrative purposes as determined by BLM.

3. **Woodcutting**—Woodcutting is prohibited. Gathering of dead and down wood for use in campfires is permitted.

4. **Firearms Use**—The area is closed yearlong to the discharge of firearms or other weapons, including archery. BB guns and pellet guns for the purpose of public safety. Target shooting and "plinking" are prohibited.

5. **Length of Stay**—Persons may occupy any specific location within the area for a period of not more than 14 days within any period of 28 consecutive days unless otherwise authorized.

6. **Pets**—Pets must be leashed at all times within the area.

7. **Closures**—Portions of the Hot Well Dunes Recreation Area may be temporarily closed to all or specific types of public use for the protection of natural and cultural resources or to provide for public safety. These areas will be signed and displayed on maps in the local area.

8. **Speed Limit**—The speed limit on and within 50 feet of the entrance road, any campsite or concentration of people is 10 miles per hour.

9. **Camping Restrictions**—Camping is not allowed within the designated parking area or within the post and cable barrier around the tubs.

10. **Waste Disposal**—Dumping of sewage and/or gray water is prohibited.

**DATES:** On or before October 12, 1993, interested parties may submit comments to the Safford District Manager, 711 14th Avenue, Safford, Arizona 85546. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these actions and issue a final determination. In the absence of any

action by the District Manager, these actions will become the final determination of the Department of the Interior.

**ADDRESSES:** 711 14th Avenue, Safford, Arizona 85546.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schnell, Outdoor Recreation Planner, BLM, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428-4040.

Dated: August 16, 1993.

**Frank Rowley,**  
*Acting District Manager.*

[FR Doc. 93-20735 Filed 8-26-93; 8:45 am]

**BILLING CODE 4310-32-M**

### INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-348]

#### Certain In-line Roller Skates With Ventilated Boots and In-line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Notice

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on September 7, 1993, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the *Federal Register*.

Issued: August 23, 1993.

**Janet D. Saxon,**  
*Administrative Law Judge.*

[FR Doc. 93-20828 Filed 8-26-93; 8:45 am]

**BILLING CODE 7020-02-P**

[Investigation 337-TA-343 (Remand)]

#### Certain Mechanical Gear Couplings and Components Thereof; Notice of Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: K-Power Products, Inc. and A.R. Hutchings.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding

officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 23, 1993.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**WRITTEN COMMENTS:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than September 7, 1993. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: August 23, 1993.

By order of the Commission.

**Donna R. Koehnke,**  
*Secretary.*

[FR Doc. 93-20829 Filed 8-26-93; 8:45 am]

**BILLING CODE 7020-02-P**

### INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 349X)]

#### Burlington Northern Railroad Co.—Abandonment Exemption—In Greene and Polk Counties, MO

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.



**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Burlington Northern Railroad Company of a 30.40-mile rail line between milepost 183.40, near Springfield, Greene County, MO, and milepost 153.00, at Bolivar, Polk County, MO, subject to environmental, public use, interim trail use/rail banking, and the standard employee protective conditions.

**DATES:** This exemption will be effective on September 26, 1993 unless stayed or a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)<sup>1</sup> must be filed by September 6, 1993. Petitions to stay must be filed by September 11, 1993. Requests for a public use condition must be filed by September 16, 1993. Petitions to reopen must be filed by September 21, 1993.

**ADDRESSES:** Send pleadings, referring to Docket No. AB-6 (Sub-No. 349X) to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: August 13, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-20846 Filed 8-26-93; 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 13, 1993 a

proposed consent decree in *United States of America v. Bethlehem Village District*, Civil Action No. 93-443-B, has been lodged with the United States District Court for the District of New Hampshire. The United States' complaint, filed at the same time as the consent decree, sought penalties and injunctive relief under the Safe Drinking Water Act, 42 U.S.C. 300f, et seq. The consent decree provides that the defendant will pay \$15,000 in civil penalties to the United States pursuant to Section 1414 of the Safe Drinking Water Act, 42 U.S.C. 300g-3. The decree also provides for the defendant to perform injunctive relief, including the installation of a filtration system and distribution system improvements.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Bethlehem Village District*, D.J. Ref. 90-5-1-1-3962.

The proposed consent decree may be examined at the office of the United States Attorney, 55 Pleasant St., room 301, Concord, NH 033001 and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, MA 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of \$6.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section,  
Environment & Natural Resources Division.

[FR Doc. 93-20790 Filed 8-26-93; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Joint Stipulation of Dismissal in *United States v. O'Donnell-Usen Fisheries Corp.*, Civil Action No. 89-2207-Y, was lodged on August 17, 1993, with the United States District Court for the District of Massachusetts. This is an action seeking civil penalties for violations of Section

301(a) of the Clean Water Act (the Act), 33 U.S.C. 1311(a), brought pursuant to Sections 309 (b) and (d) of the Act, Sections 1319 (b), (d). The action involves the O'Donnell-Usen Fisheries Corporation located in Gloucester, Massachusetts. The facility processes frozen fish into fishsticks or portions, and prepares them for sale. O'Donnell-Usen was issued a discharge permit by the City of Gloucester in 1985, which authorized O'Donnell to discharge from its treatment facility to the Gloucester sewer system subject to certain prescribed limits. The complaint alleges that O'Donnell-Usen had on numerous occasions violated the discharge standards for pH set forth at 40 CFR 403.5, the prohibition on "pass through" and "interference" set forth at 40 CFR 403.5(a)(1), and local discharge limits established by the City of Gloucester. The complaint also sought to enjoin future non-compliance by O'Donnell-Usen. O'Donnell-Usen has been in compliance with applicable limits and standards since 1990, and thus no injunctive relief is part of the Stipulation of Dismissal. The company has agreed to pay a civil penalty of \$375,000 in settlement of this action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Joint Stipulation of Dismissal. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. O'Donnell-Usen Fisheries Corporation*, DOJ Ref. #90-5-1-1-3408.

The proposed Joint Stipulation of Dismissal may be examined at the Office of the United States Attorney, District of Massachusetts, McCormack Post Office and Courthouse, Boston, MA 02109, the Office of the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street NW., Washington, DC 20005, 202-624-0892. A copy of the proposed Joint Stipulation of Dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$2.25 (25 cents per page reproduction

<sup>1</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).



costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General,  
Environment and Natural Resources Division.

[FR Doc. 93-20791 Filed 8-26-93; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,538; *Outokumpu Cooper Kensosha, Inc., Kenosha, WI*

TA-W-28,738; *Page Aluminized Steel Corp., Monessen, PA*

TA-W-28,690; *Kollmorgen Corp., Industrial Drives Div., Radford, VA*

TA-W-28,571; *G & L Machine, South Paris, ME*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,796; *Hexel Corp., Graham, TX*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,706; *Leslie Fay, Castlebrook Div., New York, NY*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,894; *Restaura, Inc., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,802 & TA-W-28,802A; *Buffalo Branch Office Sevicenter, Buffalo, NY, & Alpharetta Customer Support, Alpharetta, GA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,888; *Wagner & Brown Limited, Midland, TX*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA-W-28,715; *Wagner & Brown Limited, Midland, TX*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA-W-28,592; *Mida Corp., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,689; *Massey Ferguson Parts Co., Racine, WI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,666; *The M.W. Kellogg Co., Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,857; *Cowden Distribution Center, Lexington, KY*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,754; *Americomm Direct Marketing, Buffalo, NY*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,625; *Brooks Well Service, Inc., Kilgore, TX*

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,767, TA-W-28,767A & TA-W-28,767B; *Chevron USA*

*Production Co., Law Department, Houston, Wilcrest & Midland, TX*  
TA-W-28,768; *Chevron USA Production Co., Law Department, New Orleans, LA*

TA-W-28,769; *Chevron USA Production Co., Law Department, Bakersfield, CA*

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

#### Affirmative Determinations

TA-W-28,601; *Industrial Steel Stamping, Monroe, MI*

A certification was issued covering all workers separated on or after April 1, 1993.

TA-W-28,773; *GCA Corp., Williston, VT*

A certification was issued covering all workers separated on or after June 4, 1992.

TA-W-28,707; *Leslie Fay, Andrea Gayle Div., New York, NY*

A certification was issued covering all workers separated on or after April 20, 1992.

TA-W-28,776; *Carboloy, Inc., Warren, MI*

A certification was issued covering all workers separated on or after June 2, 1992.

TA-W-28,778; *Barry Belt, Inc., Archbald, PA*

A certification was issued covering all workers separated on or after June 3, 1992.



**TA-W-28,775; Cleo, Inc., Bloomington, IN**

A certification was issued covering all workers separated on or after March 8, 1992.

**TA-W-28,793; Petroleum Testing Service, Inc., Santa Fe Springs, CA**

A certification was issued covering all workers separated on or after December 11, 1992.

**TA-W-28,836; C.A. Reed, Inc., Williamsport, PA**

A certification was issued covering all workers separated on or after June 17, 1992.

**TA-W-28,755 and TA-W-28,756; Target Sportswear, Inc., (Target Square Road) Clearfield, PA and New Philadelphia, PA**

A certification was issued covering all workers separated on or after May 24, 1992.

**TA-W-28,758 & TA-W-28,759; Target Sportswear, Inc., (Fletcherville Road, Clearfield, PA and (Kent I Plant), Curwensville, PA**

A certification was issued covering all workers separated on or after May 24, 1992.

**TA-W-28,676 and TA-W-28,677; Circuitech, Inc., Glen Cove, NY and Wantagh, NY**

A certification was issued covering all workers separated on or after April 12, 1992.

**TA-W-28,447; E-Systems, Inc., Salt Lake City, UT**

A certification was issued covering all workers separated on or after January 22, 1992.

**TA-W-28,624; McDonnell Douglas Corp., Douglas Aircraft Co., Melbourne, AR**

A certification was issued covering all workers separated on or after May 23, 1992.

**TA-W-28,791; Union Apparel, Norvelt, PA**

A certification was issued covering all workers separated on or after June 15, 1992.

I hereby certify that the aforementioned determinations were issued during the month of August 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 18, 1993.

**Marvin M. Fooks,**  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-20853 Filed 8-26-93; 8:45 am]

BILLING CODE 4510-30-M

**Employment Standards Administration, Wage and Hour Division****Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the

applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

**New General Wage Determination Decisions**

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

**Volume III**

Arizona  
AZ930006(Aug. 27, 1993)  
Washington  
WA930013(Aug. 27, 1993)  
Washington  
WA930014(Aug. 27, 1993)

**Modification to General Wage Determination Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

**Volume I**

Delaware  
DE930002(Feb. 19, 1993)  
DE930005(Feb. 19, 1993)  
Kentucky  
KY930001(Feb. 19, 1993)  
KY930003(Feb. 19, 1993)  
KY930004(Feb. 19, 1993)  
KY930029(Feb. 19, 1993)  
KY930034(Feb. 19, 1993)



KY930035(Feb. 19, 1993)  
 Pennsylvania  
 PA930014(Feb. 19, 1993)  
 Rhode Island  
 RI930001(Feb. 19, 1993)

*Volume II*

Iowa  
 IA930004(Feb. 19, 1993)  
 Illinois  
 IL930001(Feb. 19, 1993)  
 IL930012(Feb. 19, 1993)  
 IL930013(Feb. 19, 1993)  
 IL930014(Feb. 19, 1993)

Kansas  
 KS930012(Feb. 19, 1993)  
 KS930016(Feb. 19, 1993)  
 KS930017(Feb. 19, 1993)  
 KS930022(May. 28, 1993)

Louisiana  
 LA930001(Feb. 19, 1993)  
 LA930004(Feb. 19, 1993)  
 LA930005(Feb. 19, 1993)  
 LA930007(Feb. 19, 1993)  
 LA930012(Feb. 19, 1993)  
 LA930014(Feb. 19, 1993)  
 LA930018(Aug. 06, 1993)

Minnesota  
 MN930003(Feb. 19, 1993)  
 MN930005(Feb. 19, 1993)  
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 MN930008(Feb. 19, 1993)  
 MN930012(Feb. 19, 1993)  
 MN930015(Feb. 19, 1993)

Nebraska  
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 NE930005(Feb. 19, 1993)  
 NE930010(Feb. 19, 1993)  
 NE930011(Feb. 19, 1993)  
 NE930057(Jun. 11, 1993)

Ohio  
 OH930001(Feb. 19, 1993)  
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 OH930003(Feb. 19, 1993)  
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**General Wage Determination  
 Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 20th day of August 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-20570 Filed 8-26-93; 8:45 am]

BILLING CODE 4510-27-M

**Pension and Welfare Benefits  
 Administration**

**Extension of Enforcement Policy With  
 Respect to Welfare Plans With  
 Participant Contributions**

The purpose of this notice is to announce the extension of the Pension and Welfare Benefits Administration's enforcement policy with respect to cafeteria and certain other contributory welfare plans. On June 2, 1992, the Department of Labor (the Department) announced an enforcement policy providing interim relief from the trust and certain annual reporting requirements, including the audit requirements, of the Employee Retirement Income Security Act (ERISA) for so-called "cafeteria" plans (described in section 125 of the Internal Revenue Code). The policy also temporarily relieves contributory welfare plans from compliance with the trust requirements of ERISA with respect to participant contributions used to pay insurance premiums in accordance with current regulations. The specific terms of the enforcement

policy are set forth in Technical Release 92-01. 57 FR 23272 (1992).

The enforcement policy set forth in Technical Release 92-01 contained an expiration date of December 31, 1993. The Department has determined, however, that this relief should remain effective until the adoption of final regulations addressing the application of the trust and reporting requirements of Title I of ERISA to welfare plans that receive participant contributions. Accordingly, this notice extends the enforcement policy set forth in Technical Release 92-01 until such time as final regulations are adopted or until further notice.

**FOR FURTHER INFORMATION CONTACT:** Cary L. Gilbert, Office of Regulations and Interpretations, (202) 219-8671 (not a toll free number).

Signed at Washington, DC, this 23 day of August 1993.

E. Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93-20854 Filed 8-26-93; 8:45 am]

BILLING CODE 4510-29-M

**OFFICE OF THE UNITED STATES  
 TRADE REPRESENTATIVE**

**Receipt of Petition for Identification  
 Under Section 409(b) of the United  
 States-Canada Free-Trade Agreement  
 Implementation Act and Request for  
 Public Comment**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of receipt of petition for identification under section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act; request for public comment.

**SUMMARY:** The United States Trade Representative (USTR) is providing notice that it has received a petition filed by Vista Chemical Company (Vista) pursuant to section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100-449, 102 stat. 1851 (section 409(b)). In the petition, Vista has requested the United States Trade Representative (USTR) to "identify" the United States linear alkylbenzene (LAB) industry pursuant to section 409(b) because the petition alleges that (i) the domestic LAB industry is likely to face increased competition from subsidized imports from Canada as a result of the implementation of the United States-Canada Free-Trade Agreement (FTA) and (ii) the domestic LAB industry is likely to experience a deterioration of its competitive position before rules and



disciplines relating to government subsidies will have been developed. USTR invites written comments from the public on the information contained in this petition.

**DATES:** Written comments from the public are due on or before September 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** P. Claude Burcky, Director for Canadian Affairs, (202) 395-3412, or Vanessa P. Sciarra, Assistant General Counsel, (202) 395-7305.

**SUPPLEMENTARY INFORMATION:** Vista is a domestic producer of LAB, an active ingredient in some household laundry detergent and industrial cleaning products. On July 15, 1993, Vista filed a petition pursuant to section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 requesting that the USTR identify the domestic LAB industry pursuant to section 409(b). In its petition, Vista alleged that, as a result of the implementation of the FTA, the domestic LAB industry is likely to face increased competition from subsidized Canadian imports of LAB. Further, the petition alleged that the domestic LAB industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to Canada.

Pursuant to section 409(b)(2), the USTR has until October 13, 1993 to decide, in consultation with the Secretary of Commerce, whether to identify the domestic LAB industry "on the basis that there is a reasonable likelihood" that the industry (i) is likely to face increased competition from subsidized Canadian imports of LAB and (ii) is likely to experience a deterioration of its competitive position before the rules and disciplines relating to the use of government subsidies have been developed with respect to Canada. In the event the USTR decides to identify the domestic LAB industry pursuant to section 409(b)(2), section 409(b)(3) provides that the USTR may (i) compile and make available to the industry information under section 308 of the Trade Act of 1974 or (ii) recommend to the President that an investigation by the United States International Trade Commission be requested under section 332 of the Tariff Act of 1930 or (iii) take both of the actions described in (i) and (ii).

Copies of the public version of the petition are available for public inspection in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Appointments may be made from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395-6186.

Interested persons are invited to submit written comments on the information contained in this section 409(b) petition. Comments must be filed by September 29, 1993. Comments must be in English and provided in twenty copies to: Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of the cover page or letter and each succeeding page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file which is open to public inspection.

**Frederick L. Montgomery,**  
Chairman, Trade Policy Staff Committee.  
[FR Doc. 93-20826 Filed 8-26-93; 8:45 am]  
**BILLING CODE 3190-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32781; File No. SR-Amex-93-05]

### Self-Regulatory Organizations; Order Partially Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, 4, and 5 to Proposed Rule Changes by the American Stock Exchange, Inc. Relating to Flexible Exchange Options ("FLEX Options")

August 20, 1993.

#### I. Introduction

On February 4, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Major

Market ("XMI"), Institutional ("XII"), and Standard & Poor's Corporation ("S&P") MidCap ("MID") Indexes.<sup>3</sup>

Notice of the proposed rule changes and Amendment No. 1 were published for comment and appeared in the **Federal Register** on April 29, 1993.<sup>4</sup> The Amex further amended the proposal on July 27, 1993,<sup>5</sup> July 30, 1993,<sup>6</sup> August 6, 1993,<sup>7</sup> and August 17,

<sup>3</sup> The XMI is a broad-based, price-weighted index comprised of 20 blue-chip stocks designed to measure the performance of the blue-chip sector of the U.S. equity market. The XII is a broad-based, capitalization-weighted index consisting of the 75 major stocks currently held in highest dollar amounts in institutional portfolios that have a market value of more than \$100 million in investment funds. The MID is a capitalization-weighted index composed of 400 domestic stocks from four broad market sectors: industrials, utilities, financials and transportation. The MID is designed to track the performance of domestic stocks that fall in the middle capitalization range of securities. The Amex's filing also proposed to trade FLEX Options on the Japan index ("JPN"), a modified price-weighted index that measures the aggregate performance of 210 common stocks actively traded on the Tokyo Stock Exchange that are representative of a broad cross section of Japanese industries. The Commission is only approving in this order FLEX Options on the XMI, XII, and the MID Indexes.

<sup>4</sup> See Securities Exchange Act Release No. 32196 (April 22, 1993), 58 FR 26009. On April 12, 1993, the Exchange filed an Amendment No. 1 setting forth applicable position and exercise limits for FLEX Options. This amendment was published for comment and appeared in the **Federal Register** noted above.

<sup>5</sup> On July 27, 1993, the Amex filed Amendment No. 2 revising proposed Rules 903G, 904G, and 906G, and introducing proposed Rule 909G. Proposed Rule 909G sets forth applicable financial requirements for Registered Options Traders ("ROT's") and floor brokers trading FLEX Options. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated July 27, 1993 ("Amendment No. 2").

<sup>6</sup> The Exchange on July 30, 1993 filed Amendment No. 3, which among other things, clarifies the FLEX Options trading hours and the parameters of the "Request Response Time" defined in proposed Rule 900G(b)(5). See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, dated July 30 1993 ("Amendment No. 3").

<sup>7</sup> The Exchange on August 6, 1993 filed Amendment No. 4, which among other things, clarifies that priority, parity, and precedence procedures for bids and offers of FLEX Options must be in compliance with Section 11(a) of the Act and the rules promulgated thereunder. In addition, Amendment No. 4 also specifies that Exchange specialists trade FLEX Options are committed to provide FLEX quotes in response to a request for Quotes in an underlying equivalent value of at least \$10 million or the dollar amount indicated in the Request for Quotes, whichever is less. See letter from Claire McGrath, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 6, 1993 ("Amendment No. 4").

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1991).



1993.<sup>8</sup> This order approves the proposal as amended.<sup>9</sup>

## II. Background

The purpose of the Amex's FLEX Option proposal is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. The Amex is currently proposing to trade FLEX Options on the XMI, XII, JPN, and MID stock indexes. In recent years, an over-the-counter ("OTC") market in customized index options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions<sup>10</sup> through a relatively small number of securities dealers. The Exchange believes FLEX Options will help it compete with this growing OTC market in customized index options. In particular, the options traded under Amex's FLEX proposal will not have the following contract terms set in advance: (1) Strike prices; (2) exercise types; (3) expiration date;<sup>11</sup> and (4) form of settlement.

The Amex believes that market participants will benefit from the trading of FLEX Options in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing our positions; (2) increased market transparency; and (3)

<sup>8</sup> On August 17, 1993, the Exchange filed Amendment No. 5, which among other things, sets forth additional financial requirements for FLEX-registered specialists. Specifically, Proposed Rule 909G(a) requires that FLEX-registered specialists to maintain at least \$1 million net liquidating equity or net capital, as applicable. See letter from Howard A. Baker, Senior Vice President, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated August 17, 1993 ("Amendment No. 5").

<sup>9</sup> The Commission is approving the Amex FLEX Options proposal based on the XMI, XII, and MID Indexes. At this time, however, the Commission is deferring judgment on the JPN Index pending further review. In addition, for those amendments approved on an accelerated basis, the Commission is soliciting comment on the substance of those amendments. Any comments received will be considered in connection with review of further Amex initiatives in this area.

<sup>10</sup> Large size in this context is intended to mean options having an underlying contract value equal to or greater than \$1 million.

<sup>11</sup> The FLEX Options proposal, however, requires that the expiration dates for FLEX Options be at least two business days away from the expiration dates for existing listed options in order to protect against possible market disruptions that may otherwise result from the concurrent expiration of existing listed non-FLEX index options and FLEX Index Options. See Amendment No. 2, *supra* note 5.

heightened contra-party creditworthiness due to the role of the Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.<sup>12</sup>

## III. Description of the Proposal

Transactions in FLEX Options traded on the Amex generally will be subject to the same rules that presently apply to the trading of Amex index options.<sup>13</sup> In order, however, to provide investors with the flexibility to designate certain of the terms of the options and to accommodate other special features of FLEX Options and the way in which they are traded, the Amex has proposed several new rules.

The principal rules proposed by the Amex that are uniquely applicable to the FLEX market include a rule containing new definitions (Rule 900G), a rule regarding the hours of trading FLEX Options (Rule 901G), a special rule regarding trading rotations (Rule 902G), rules setting forth the special terms of FLEX contracts and certain special pieces of information that must be included in FLEX Requests for Quotes and Responsive Quotes (Rule 903G), rules prescribing the mechanics of initiating a FLEX Request for Quotes and bidding and offering in response thereto, rules setting forth the principles applicable to the formation of binding FLEX contracts, rules defining the applicable priority principles (Rule 904G), special position limit and exercise limit rules (Rules 906G and 907G), and special financial requirements for ROTs and floor brokers trading FLEX Options (Rule 908G and 909G). Discussion of each of these new rules follows.

Proposed Rule 900G adopts nomenclature uniquely tailored to fit the special characteristics of FLEX Options and the FLEX market. For example, the term "Request Response Time" refers to the time interval, set by the submitting member in its Request for Quotes, during which responsive bidding and offering is to take place. Similarly, the term "FLEX Quote" has both its usual connotation—specialist and ROT bids and offers—and a new connotation—orders to purchase and

<sup>12</sup> The Commission has designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act. See Securities Exchange Act Release No. 31919 (February 23, 1993), 58 FR 12056 ("9b-1 Order"). As described in note 34 *infra*, and for the same reasons stated in the 9b-1 Order, XMI, XII, and MID FLEX Options are deemed "standardized options" for purposes of the Rule 9b-1 options disclosure framework.

<sup>13</sup> See Amex Constitution and Rules, Part V, Section 11 (May 1993), as amended by appropriate Amex rule changes.

orders to sell entered by floor brokers—that is necessary in view of the unique mechanics of the FLEX exchange auction.

Proposed Rule 901G provides that FLEX trading will commence at 10 a.m. and close at 4:15 p.m. (New York time), although the Exchange may, from time to time, determine to amend the trading hours for FLEX Options as circumstances dictate.<sup>14</sup> As a complementary rule uniquely applicable to FLEX Options, Proposed Rule 902G specifies that there will be no trading rotations in FLEX Options.

Proposed Rule 903G specifies the term elements and other informational ingredients that must be included in Requests for Quotes, FLEX Quotes submitted in response to such requests, and, ultimately, FLEX contracts that are the product of FLEX trading. As paragraph (a) of proposed rule 903G indicates, the content of certain terms of each FLEX contract is to be determined by the parties to the contract. Other terms, such as the level of the index multiplier and the nature of the rights and obligations of FLEX Option purchasers and sellers, are the same for FLEX as for non-FLEX index options.

More specifically, Paragraph (b) of Proposed Rule 903G specifies the term elements that a submitting member must include in its Request for Quotes and indicates the content alternatives available for each term. Under this paragraph a submitting member must designate, among other terms, the day, month, and year of the FLEX Option's expiration, subject to certain limitations designed to avoid the overlap of FLEX expirations with expirations of non-FLEX index options.<sup>15</sup> Similarly, a submitting Member must identify the exercise price<sup>16</sup> and the exercise

<sup>14</sup> Specifically, the Amex proposes to implement the hours of trading for FLEX Options as follows: (1) Initial hours of FLEX trading will be 10 a.m.—4:15 p.m. (New York time); (2) FLEX trading hours may be altered at the discretion of the Exchange by 15 minutes or less so long as the change does not extend trading beyond the normal Amex business hours of 9:30 a.m.—4:15 p.m. (New York time); (3) FLEX trading hours that are altered by more than 15 minutes but remain within normal business hours must be submitted by the Exchange to the Commission in a section 19(b)(3)(A) filing; (4) FLEX trading hours extended beyond the Amex's normal business hours must be submitted to the Commission for approval pursuant to section 19(b)(2); and (5) the Exchange will provide adequate advance notification to its members and member organizations of such changes in FLEX trading hours. See Amendment No. 3, *supra* note 6.

<sup>15</sup> See Securities Exchange Act Release Nos. 31844 (February 9, 1993), 58 FR 8796 ("QIX Approval Order"); 31330 (October 16, 1992), 57 FR 48408 ("A.M.-settled XII Approval Order").

<sup>16</sup> Specifically, exercise prices can be determined in reference to (a) a specific index value number,



settlement value<sup>17</sup> of the FLEX Option, and those variable FLEX terms must fit within stated parameters.

Paragraph (c) of this proposed rule lists certain additional categories of information that must be addressed by the submitting member in its Request for Quotes. In particular, under this paragraph a submitting member must indicate the type and form of quote sought, the length of the Request Response Time (i.e., the time interval during which FLEX-participating members may enter quotes responsive to the request),<sup>18</sup> and the submitting member's intention, if any, to cross a customer order or act as principal with respect to any part of the FLEX trade.

Finally, paragraph (d) of this proposed rule specifies the maximum term and the minimum value size of any FLEX contract and provides that the term and size may be set, within the stated limits, at the discretion of the submitting member or the quoting party, as applicable. Under this paragraph, the maximum FLEX term is five years; the minimum value size (i.e., the aggregate underlying dollar value that is the subject of the option) for a FLEX Request for Quotes is \$10 million in an opening transaction in a new FLEX Option series and \$1 million in an opening or closing transaction in any currently-opened FLEX series (or less in a closing transaction where the remaining underlying value is less than \$1 million); and the minimum value size for quotes in response to a Request for Quotes is the lesser of \$1 million or the remaining underlying equivalent value on a closing transaction (except that Exchange specialists trading FLEX Options on the underlying index that is

the subject of the Request for Quotes must be prepared to respond to a Request for Quotes in a size of at least \$10 million underlying value or the dollar amount indicated in the Request for Quote, whichever is less).

These provisions, collectively, provide investors and FLEX-participating members with significant latitude in structuring the terms of FLEX Options contracts. The Exchange believes that such latitude is both important and necessary to the Exchange's effort to create a product and a market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the OTC options market. To enable the efficient, centralized clearance and active secondary trading of opened FLEX Options, however, the extent of variability in structuring FLEX Options is necessarily limited. Only certain terms are subject to flexible structuring by the parties to FLEX transactions, and most of such terms have a specified number of alternative configurations. In addition to the specified term alternatives indicated above, FLEX Options will be limited to transactions on the XMI, XII, and MID Indexes<sup>19</sup> and shall be denominated for settlement in cash in U.S. dollars only under Proposed Rule 903G(e).

Proposed Rule 904G prescribes in some detail the mechanics of submitting Requests for Quotes and entering responsive bids and offers. These mechanics, described below, are designed to create a modified auction that takes into account the relatively small number of transactions that are likely to occur in this institutional, large-size market, while at the same time providing the FLEX market with the price improvement and transparency benefits of competitive Exchange floor bidding and offering, as compared with the OTC market. Proposed Rule 904G also subjects FLEX Options on the Exchange to existing time and price priority principles and contains special rules respecting the bidding and offering process and the method of allocating trades in instances in which the submitting member expresses an intention to cross or act as

principal on a Request for Quotes.<sup>20</sup> These proposed rules are designed to promote active bidding and offering that will generate the best price available, while also providing incentives to specialists, ROTs, floor brokers, and upstairs firms alike to participate in the FLEX market.

In particular, paragraphs (a) and (b) of proposed Rule 904G indicate that the FLEX bidding and offering process is initiated once a submitting member has supplied a Request for Quotes in proper form and the FLEX Specialist has disseminated the terms of that request at the post and over FLEX communications. Thereafter, FLEX Quotes in proper form may be entered, modified, or withdrawn by public outcry at any time during the Request Response Time. The length of the Request Response Time, which must fall within time parameters to be set by the Exchange, is to be specified in the Request for Quotes.<sup>21</sup> At the expiration of the Request Response Time, the best bid and/or offer (the "BBO") will be determined according to Exchange price and time priority principles set forth in Amex Rule 126.

Proposed paragraph (c) of Rule 904G provides that the BBO will be displayed at the post and over communication facilities and, at that point, or after further bidding and offering that occurs in certain specified circumstances, the submitting member will have the opportunity to accept or reject the BBO. The submitting member, however, has no obligation to accept the BBO. Thus, whenever the BBO is rejected the Request for Quotes expires, although Flex-participating Exchange members other than the submitting member may accept the entire order or the unfilled balance of the BBO. Similarly, whenever the BBO is accepted, the transaction (or transactions) will be executed in accordance with the crossing principles and priority principles set forth in Amex Rule 126 and Commentary .02 to Amex Rule 950. FLEX-participating members may accept any unfilled balance of the BBO.

Proposed Rule 906G states position limits that will be unique to FLEX Options. Specifically, proposed Rule 906G provides that FLEX Options will be subject to a maximum limit of 200,000 contracts on the same side of the market on a given underlying index, without aggregation for other contracts on the same index with one exception. Under the proposal members must, at

(b) a method for fixing such a number at the time a FLEX quote is accepted, and/or (d) the cap interval in the case of capped style options.

<sup>17</sup> Specifically, exercise settlement value is defined as the index value reported at the close or at the open of trading on the Exchange or as a specified average provided that any average index value must conform to the averaging parameters established by the Exchange, that is used in setting the exercise settlement amount.

The Exchange has determined that the averaging parameters will be limited to three alternatives: The average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. See letter from Howard A. Baker, Senior Vice President, Options Division, Amex, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated August 4, 1993.

<sup>18</sup> Initially, the Request Response Time will be a minimum of 10 minutes and a maximum of 30 minutes. Under the proposed rules, the Exchange has the authority to set the range for the Request Response Time. The Exchange will provide at least 2 days notice to members and member organizations of any changes to the Request Response Time range. See Amendment No. 3, *supra* note 6.

<sup>19</sup> The Commission is today approving the Exchange's FLEX Options framework for those contracts based on the XMI, XII, and MID Indexes. Amex's proposal to trade FLEX Options on the JPN Index is still pending with the Commission. If the Amex in the future proposes to trade FLEX Options based on different underlying indexes, a rule proposal under section 19(b) of the Act would be required to be filed with the Commission.

<sup>20</sup> See Amex Rule 126 and Commentary .02 to Amex Rule 950. See also Section 11(a) of the Act and note 7, *supra*.

<sup>21</sup> See *supra* note 18.



the close of business two days prior to the last day of trading of the calendar quarter aggregate positions in P.M.-settled FLEX Options with comparable quarterly expiration index options ("QIXs") and those positions may not exceed the QIX limits.<sup>22</sup> In each case, the applicable hedge exemptions under Rule 904C may be applied to the aggregate positions.<sup>23</sup>

Proposed Rules 908G and 909G set minimum financial requirements for ROTs, floor brokers, and specialists trading FLEX Options. The financial minimums stated in proposed Rule 909G are unique to FLEX Options.

Specifically, proposed Rule 909G(a) require FLEX-registered specialists to maintain at least \$1 million in net liquidating equity or net capital, as applicable.<sup>24</sup> Proposed Rule 909G(b) requires every ROT and/or floor brokers to maintain at least \$100,000 in net liquidating equity in any FLEX trading account with each designated clearing member.

Proposed Rule 908G extends the fidelity bond requirements under existing Exchange Rule 330 to FLEX ROTs and floor brokers, thereby subjecting FLEX participants to a focused creditworthiness review by their clearing members. The review and issuance requirement imposed under Proposed Rule 908G substantially supplements the independent financial requirements of proposed Rule 909G.<sup>25</sup>

<sup>22</sup> The specific position and exercise limits for QIXs on the Amex are as follows: (1) QIX XMI are subject to a 34,000 contract limit; (2) QIX XII are subject to a 45,000 contract limit with an index arbitrage limitation of 25,000 contracts; and (3) QIX MID are subject to a 25,000 contract limit. In addition, these positions are entitled to certain hedge exemptions from position limits under the Exchange's rules. See QIX Approval Order, *supra* note 15.

<sup>23</sup> Under the proposal, Amex's position limits would be established as a three-year pilot, during or following which adjustments may be required. See Amendment No. 3, *supra* note 6. In addition, the Amex has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. See, *infra*, discussion section on one year monitoring report.

<sup>24</sup> On August 11, 1993, the Commission amended its net capital rule under the Act, to make the rule applicable to certain specialists that are currently exempt from the rule. See Securities Exchange Act Release No. 32737 (August 11, 1993). The Amex has represented that specialists in FLEX Options satisfy these requirements. See Amendment No. 5, *supra* note 8.

<sup>25</sup> The Exchange's FLEX Options proposal also includes a change concerning the discretionary authority of floor brokers. Proposed Rule 905G would permit a floor broker to purchase or sell an unspecified number of FLEX Options based on such floor broker's discretion. This rule would require discretionary authority to be granted by the customer in a manner approved by the Amex and reflected in a contemporaneously-prepared time-stamped document prepared by the floor broker. A

#### IV. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) and 11A.<sup>26</sup> In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for broad-based indexes currently traded on the Exchange that may be more suitable to their investment needs than other outstanding FLEX index options.<sup>27</sup>

Moreover, consistent with section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the Amex to compete with the growing OTC market in customized index options.

For instance, as noted by the Amex, the OTC market in customized index options has developed, in part, to meet the needs of institutional investors who require increased flexibility for the purpose of satisfying particular investment objectives that could not be met by the existing standardized exchange markets in options. Accordingly, the Commission believes the Amex proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the Amex proposal will help to promote the maintenance of a fair and orderly market, consistent with sections 6(b)(5) and 11A, because the purpose of the proposal is to extend the benefits of a listed, exchange market in XMI, XII, and MID options that have certain terms varied by the particular investor.<sup>28</sup> The attributes of the Exchange's options market versus an OTC market include,

copy of this approving document would be promptly sent to the customer with an additional copy maintained by the floor broker for the full duration of the FLEX Option contract or the time required by the Commission under Rule 17a-4 of the Act, whichever is longer.

<sup>26</sup> 15 U.S.C. 78f(b)(5) and 78k-1 (1982).

<sup>27</sup> The Chicago Board Options Exchange, Inc. ("CBOE") trades FLEX Options based on the S&P 100, S&P 500, and Russell 2000 stock indexes. See Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 ("S&P 100 and 500 FLEX Options Approval Order") and 32694 (July 29, 1993) (approval of File No. SR-CBOE-93-16).

<sup>28</sup> As stated in note 9, *supra*, the Commission is approving the Amex FLEX Options proposal only for contracts based on the XMI, XII, and MID indexes.

but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.<sup>29</sup>

In general, transactions in FLEX Options will be subject to many of the same rules that apply to index options traded on the Amex. In order to provide investors with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.

Due to the customized nature of these options, FLEX Options will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 904G sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain options terms.<sup>30</sup> Accordingly, the Amex proposed rules specific to FLEX vary from the traditional procedure for trading non-FLEX stock index options.

The Commission believes that the FLEX auction process, as outlined in Amex's proposal, appears reasonably designed to provide the benefits of an Exchange auction environment for XMI, XII, and MID options with features of a negotiated transaction between investors. The Commission recognizes that the Amex proposal marks, in many respects, an experiment in trading option contracts of substantial value, for which continuous quotation may be difficult to sustain. Accordingly, the

<sup>29</sup> On February 26, 1993, the Commission received a comment letter from the New York Stock Exchange, Inc. ("NYSE") on the CBOE's original FLEX Option proposal which articulated concerns about potential adverse effects FLEX Options could have on securities markets trading securities that are components of stock index options. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, dated February 26, 1993.

As discussed in the S&P 100 and 500 FLEX Options Approval Order, the Commission is satisfied that the CBOE, and now the Amex, have established appropriate measures to address and monitor potential adverse effects. Moreover, there have been no indications of adverse market consequences through July 19, 1993, in the 46,715 FLEX Options contracts that have expired at the CBOE since trading in FLEX Options commenced. As discussed below, although the Commission shares many of the NYSE's concerns regarding market impact, we believe that structures are in place to monitor the FLEX market and that the Amex, CBOE and NYSE will consider appropriate changes if necessary.

<sup>30</sup> A submitting member (the Exchange member that initiates the FLEX auction process by submitting a request for quotes) is under no obligation to accept any FLEX bid or offer, even if it is the best bid or offer ("BBO"). Proposed Amex Rule 904G(c)(iii).



Amex has established procedures for quotes upon request, which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission notes that FLEX Options based on the XMI, XII, and MID can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in those securities.<sup>31</sup> Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,<sup>32</sup> these concerns are reduced in the case of FLEX Options, since expiration of these stock index options will not correspond to the normal expiration of stock index option, stock index futures, and options on stock index futures. In particular, FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that FLEX Options could have on the underlying cash market on expiration days.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX and QIX Options. As proposed, Amex Rule 906G requires P.M.-settled FLEX Options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX Options would be aggregated two days prior to expiration subject to the lower QIX position limits of 34,000 for the XMI, 45,000 for the XII, and 25,000 for the MID. The Commission believes that these rules should help prevent an investor from using FLEX Options for the purposes of avoiding the position limits applicable to comparable QIXs.

Nevertheless, because the position limits for FLEX Options are much higher than those currently existing for outstanding exchange-traded index options and open interest in one or more FLEX series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX Option stock indices. The Amex has taken several steps to address this concern, including establishing the proposed position limits as a three-year pilot and

undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading FLEX Options. That report will include, among other things:

- The type of strategies used by FLEX Options market participants and whether FLEX Options are being used, in lieu of existing standardized stock index options.
- The type of market participants using FLEX Options.
- The terms which are predominantly being "flexed" by market participants, i.e., strike prices, settlement value (A.M. v. P.M.), term of duration, European v. American style.
- The size of the FLEX position on average, the size of the largest FLEX positions on any given day and the size of the largest FLEX position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect FLEX positions have had on the underlying cash market, including an analysis of FLEX positions and their market impact on days NYSE's Rule 80A is invoked.

In addition, the Commission expects and the Amex has agreed to monitor the actual effect of FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the Amex, the Commission believes that the Amex and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with FLEX Options. Specifically, the Exchange represents that "the introduction of FLEX Options by the Amex will not degrade OPRA's throughput capacity, either on total throughput over the trading day or during the opening peaks."<sup>33</sup>

The Commission finds good cause for approving proposed Amendment Nos. 2, 3, 4, and 5 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because such amendments will help to benefit the FLEX Options market and market participants utilizing these options. In

addition, the changes included in these Amendments are technical in nature rendering acceleration reasonable. The Commission accordingly believes that granting accelerated approval of Amendments 2, 3, 4, and 5 of the proposed rule change is appropriate and consistent with section 6 of the Act.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Amendments. Persons making written submissions should file six copies thereof with the Secretary, Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93-05 and should be submitted by September 17, 1993.

#### VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal to trade FLEX Options on the XMI, XII, and MID is consistent with the Act and sections 6 and 11A of the Act, in particular. In addition, the Commission also finds pursuant to Rule 9b-1 under the Act, that FLEX Options based on the XMI, XII, and MID stock indexes are standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act.<sup>34</sup>

<sup>34</sup> As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b-1(a)(4) under the Act. See Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792. On May 4, 1993, Chairman Broaden pursuant to Public Law 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), and Article 30-3 of the Commission's Statement of Organization, Conduct and Ethics; and Information and Requests (17 CFR 200.30-3), designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized

<sup>31</sup> See A.M.-settled XII Approval Order *supra* note 15.

<sup>32</sup> *Id.*

<sup>33</sup> See letter from Charles H. Faurot, Managing Director, Market Data Services, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated July 30, 1993.



It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>35</sup> that the portion of the amended proposed rule change (SR-Amex-93-05), proposing FLEX Options on the XMI, XII, and MID Indexes, including Amendment Nos. 2, 3, 4, and 5 on an accelerated basis, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>36</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-20861 Filed 8-26-93; 8:45 am]

BILLING CODE 8610-01-M

[Release No. 34-32780; File No. SR-MSRB-93-4]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Board's Arbitration Code

August 20, 1993.

On March 23, 1993, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> a proposed rule change consisting of amendments to the Board's Arbitration Code. The proposed rule change was published for comment in Securities Exchange Act Release No. 32168 (April 19, 1993), 58 FR 22006 (April 26, 1993). No comments were received. On August 3, 1993, the Board filed with the Commission a letter amendment revising the rule filing to incorporate changes in the text of the Code that were requested by the Commission.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The proposed rule change amends MSRB rule G-35, the Board's Arbitration Code (hereafter referred to as "the proposed rule change"), to reflect recent amendments to the Uniform Code of Arbitration ("Uniform Code"). The Uniform Code has been developed by

options" pursuant to Rule 9b-1(a)(4). Accordingly, this subdelegation provides the necessary authority for XMI, XII, and MID FLEX Options to be designated as "standardized options" by the Division of Market Regulation. See Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

<sup>35</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>36</sup> 17 CFR 200.30-3(a)(12) (1992).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> See letter from Jill C. Finder, Assistant General Counsel, to Katherine A. England, Assistant Director, Commission (August 3, 1993).

the Securities Industry Conference on Arbitration ("SICA") and is the basis for the MSRB's Arbitration Code.

#### Matters Subject to the Board's Arbitration Code

The proposed rule change adds new language (identical to the Uniform Code) to Section 1 of the Code that excludes class action claims from Board arbitration proceedings. The amendments also provide that a claimant may pursue a claim in arbitration even if that claim is the subject of a class action, as long as the claimant has complied with any court-imposed conditions for properly withdrawing from the class. In addition, the amendments prohibit dealers from attempting to compel a customer to arbitrate a claim included in a class action, or from attempting to enforce an arbitration agreement against any customer that has initiated a class action claim in court and who has not opted out of the class, until a court denies class certification, the class is decertified, or the court excludes the customer from the class.

#### Persons Subject to the Board's Arbitration Code

The amendment conforms Section 2 of the Board's code to the Uniform Code by including the terms "municipal securities dealer" and "municipal securities broker" as persons subject to the Code.

#### Joinder and Consolidation

The amendments track the Uniform Code by clarifying and expanding the ability of parties to proceed jointly in arbitration proceedings. Claimants may join in one action, and respondents may be joined in one action, where claims arise out of the same transaction or occurrence, or series of transactions or occurrences, and where questions of law or fact common to the parties will arise in the action. In addition, judgments may be apportioned according to the claimants' rights to relief and the respondents' liabilities. The amendments clarify that the Director of Arbitration is permitted to consolidate claims that have been filed separately, and that all further determinations made by an arbitration panel concerning such matters shall be deemed final.

#### Designation of Time and Place of Hearings

The rule change would amend Section 16 of the Board's Code to make final the Director's and arbitrators' determinations concerning the time and place of hearings.

#### Failure to Appear

The amendments to Section 19 clarify that arbitrators are authorized to proceed with and resolve a case if a party fails to appear at a hearing or at any continuation of a hearing session.

#### Discovery

The amendments to Section 22 clarify when discovery requests may be served.

#### Party Service of Amended Pleadings

The amendments to Section 29 require the parties to serve copies of amended pleadings on all other parties and provide the Director of Arbitration with sufficient additional copies for each arbitrator.

#### Awards

This amendment to Section 31 provides that interest shall accrue on awards that are not paid within 20 calendar days of receipt unless an appeal or motion to vacate has been filed in court. The amendments also provide for the determination of the rate of interest to be applied. This amendment to Section 31 retains the MSRB's existing safeguards for investors requiring that awards that are not paid promptly be protected through escrow accounts or letters of credit, while adding the additional measures developed by SICA that require interest to be paid on awards that are not promptly paid.

#### Agreement to Arbitrate

The amendments to Section 32 are intended to assure that a party who does not sign a submission agreement, but is subject to other agreements to arbitrate, also is bound by the Board's Arbitration Code.

#### Use of Simplified Arbitration for Small Claims

The amendments to Section 34, paragraph (a), eliminate the requirement that a customer demand use of the small claims procedures before they can be implemented and the requirement that parties first consent in writing to the use of these procedures.

The amendments to Section 34, paragraph (h), add new language which codifies the applicability of Board discovery procedures to simplified arbitrations when a public customer demands a hearing and establishes a procedure to resolve discovery disputes when no hearing is demanded or consented to.

#### Simplified Arbitrations—Intra-Industry

The amendments to Section 35, paragraph (a), clarify that only those inter-dealer small claims that are subject



to the Board's arbitration code shall be resolved pursuant to the simplified procedures set forth in this section.

#### *Predispute Arbitration Agreements*

The amendments to Section 36 add new language requiring that all new predispute arbitration agreements signed by customers must include a prescribed statement excluding class actions from the arbitration contract and clarifying investors' ability to pursue class actions in court. This amendment applies only to new agreements signed by an existing or new customer.

## II. Discussion

The Uniform Code has been developed by SICA in an effort to promote consistency in the securities industry arbitration process. Because the MSRB's Arbitration Code closely tracks the Uniform Code, the MSRB must amend it periodically to bring it into closer conformity with recent amendments to the Uniform Code. The proposed rule change will amend the Board's code accordingly.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and in particular, Section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest, and Section 15B(b)(2)(D), which authorizes the Board to provide for the arbitration of claims, disputes and controversies relating to transactions in municipal securities.

The Commission agrees with the Board that the proposed amendments will facilitate the just and timely resolution of disputes between customers and dealers, and will further the Board's statutory mandate to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 93-20794 Filed 8-26-93; 8:45 am]

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[Release No. 34-32788; File No. SR-NYSE-93-28]

### **Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 35 (Floor Employees To Be Registered) and Rule 301 (Proposed Transfer or Lease of Membership)**

August 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On July 30, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NYSE is herewith filing proposed amendments to Rules 35 and 301 which will require all Floor employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking and appropriate processing. The Exchange proposes to adopt the following amendments:<sup>2</sup>

##### **Rule 35—Floor Employees To Be Registered**

... Supplementary Material:  
.50 Applications for Registration—Registration applications for all employees of members and member organizations for admission to the Floor shall be submitted to the Exchange on the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

.60 Fingerprinting—All Floor employees of members and member organizations and all employees of members and member organizations who have submitted registration applications for admission to the Floor

<sup>1</sup> See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Diana Luke-Hopson, Branch Chief, Commission, dated July 30, 1993. Amendment No. 1 renumbered the Supplementary Material to NYSE Rule 301.

<sup>2</sup> With respect to the following language, italicizing indicates new material and brackets indicate material to be deleted.

are required to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Exchange for identification and appropriate processing.

##### **Rule 301—Proposed Transfer or Lease of Membership**

Supplementary Material:

[.21] .20 Bids and offers—Memberships. (No change in text).

[.22] .21 Deposit—Indemnity agreement. (No change in text).

[.23] .22 Application for membership.—In making application for membership, a candidate is required to sign a personal statement, on a form prescribed by the Exchange, giving among other things, complete details as to [his] business history. [He must] A candidate who will be active on the Floor will be required to arrange with the Medical Clinic located in the Exchange building for a physical examination. [He must] A candidate may also be required to present letters of recommendation from at least three responsible persons other than those persons referred to in .24 below.

.23 Fingerprinting.—Every member and every applicant for membership is required to be fingerprinted and to submit such fingerprints, or cause the same to be submitted to the Exchange for identification and appropriate processing.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

###### **(a) Purpose**

Rule 35 states that employees of members or member organizations may not be admitted to the Floor unless such employees are registered with and approved by the Exchange. The registration process consists of filling out an application card and a data sheet which call for disclosure of very limited information (e.g., name of employee,



employee's date of birth and name of employer). Currently, the only Floor employees required to submit a completed Uniform Application for Securities Industry Registration or Transfer ("Form U-4") are those who accept orders from the public.

Under the proposed amendment to Rule 35, Floor employees will be required to submit Form U-4 in order to become registered. The form U-4 requires detailed disclosure of background information, including information regarding employment and disciplinary history, and is the standard industry form submitted to self-regulator organizations ("SRO") for individuals required to be registered (including securities salespersons and traders). Applicants for Exchange membership are currently required to submit Form U-4.

Having the background information submitted on Form U-4 will enable the Exchange to better fulfill its responsibilities by identifying those individuals who are statutorily disqualified under section 3(a)(39) of the Act.<sup>3</sup> The Exchange is required to make a determination in each case where an individual who is subject to a statutory disqualification (e.g., has been suspended or barred by an SRO, has been convicted of any felony or other specified offense, etc.) seeks admission to or continuance of membership, participation in, or association with a member or member organization. In addition, detailed reporting regarding statutory disqualifications to the Commission is required by Rule 19h-1<sup>4</sup> under the Act for admission or continuance of membership or participation or association with a member or member organization, notwithstanding a statutory disqualification.

Additional amendments to Rule 35 and an amendment to Rule 301 will require all Floor employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking and appropriate processing. The proposed amendments to require fingerprinting of all Exchange members and Floor clerks will also help in identifying persons who are subject to a statutory disqualification as well as enhance the overall security on the Exchange Floor.

Fingerprinting is currently required for each partner, director, officer or employee of broker-dealers pursuant to

Rule 17f-2<sup>5</sup> under the Act, with certain exceptions. Currently, members conducting business with the public (e.g., Floor members who accept orders from institutional or retail customers and other non-broker/dealers) are required to submit fingerprints. Members that do not conduct business with the public have not been required by the Exchange to submit fingerprints since the adoption of rule 17f-2 in the 1970's because they do not physically handle monies or securities. However, the Exchange has now determined that all members should be fingerprinted since they do represent customers in the auction market and are an integral part of the trading process. The requirement to fingerprint members is consistent with the requirements of other exchanges.

The requirements of the amended rules to submit Form U-4 and fingerprints will apply to all current and prospective Floor employees and members.

#### (b) Statutory Basis

The proposed rule change is consistent with section 17(f)(2) of the Act, which requires (with certain exceptions) fingerprinting of each partner, director, officer or employee of broker-dealers.

The rule change is also consistent with section 3(a)(39) of the Act because having more comprehensive background information submitted on Form U-4 will enable the Exchange to identify individuals who are statutorily disqualified under section 3(a)(39).

The rule change advances the objectives of Rule 19h-1 under the Act which requires detailed reporting of persons subject to statutory disqualification to the Commission.

Finally, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and to protect the investing public.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-93-28 and should be submitted by September 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 20859 Filed 8-26-93; 8:45 am]

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<sup>3</sup> 15 U.S.C. 78c(a)(39) (1988).

<sup>4</sup> 17 CFR 240.19h-1 (1992).

<sup>5</sup> 17 CFR 240.17f-2 (1992).



[Release No. 34-32775, File No. SR-PSE-92-13]

### Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Trading Restrictions Imposed on Financially Affiliated PSE Members

August 20, 1993.

On April 13, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that broadens the scope of Rule 6.40 governing trading restrictions imposed on financially affiliated market makers to include financial arrangements between market makers and any other PSE member or member organization. The proposal also expands the trading restrictions to prohibit financially affiliated PSE members from trading in the same crowd without the approval of two floor officials.<sup>3</sup>

Notice of the proposed rule change was published for comment and appeared in the *Federal Register* on July 14, 1992.<sup>4</sup> No comments were received on the proposal.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1992).

<sup>3</sup> The PSE amended the proposal on May 4, 1992 in order to provide cross-references to other relevant PSE rules with provisions or terms identical to those contained in Rule 6.40, thereby avoiding duplicative language throughout the PSE's rules. Specifically, the PSE deleted proposed paragraphs (a) (1)-(3) of Rule 6.40 and replaced them with a cross-reference to PSE Rule 4.18, entitled "Disclosure of Financial Arrangements of Members," because the provisions are already contained in subparagraphs (a) (1)-(3) of Rule 4.18. Similarly, the PSE amended PSE Rule 6.84, entitled "Joint Accounts," by deleting language from subparagraph (f) and replacing it with a cross-reference to Rule 6.40 because the language deleted from Rule 6.84 is also contained in proposed Rule 6.40(b). See Letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 4, 1992. The PSE also amended the proposal on May 22, 1992, to include in Rule 4.18 provisions which the PSE proposed to delete from Rule 6.40. Specifically, as originally submitted, the PSE proposal deleted language from Rule 6.40(d) and replaced it with a cross-reference to Rule 4.18. The deleted language, however, contained more provisions than those contained in Rule 4.18. Accordingly, the PSE amended Rule 4.18 to include all of the provisions deleted from Rule 6.40. See Letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 22, 1992. The May 22, 1992 amendment was not published by the Commission in the notice of the PSE's rule proposal, dated May 26, 1992. See note 4, *infra*. However, because this amendment is minor in nature and does not change the substance of the PSE's rule, it has not been separately noticed for comment.

<sup>4</sup> Securities Exchange Act Release No. 30738 (May 26, 1992), 57 FR 31225.

Currently, the PSE has provisions in its rules designed to prevent the domination of options trading crowds by groups of market makers with financial arrangements between themselves. Specifically, in this regard, the PSE has rules regarding the disclosure of financial arrangements among market makers and rules that place restrictions on the trading activities of market makers with certain financial arrangements. The PSE proposes to clarify and modify its rules in both of these areas.

The PSE proposes to consolidate in Rule 4.18 the requirement that market makers disclose to the Exchange any financial arrangements with market makers, floor brokers, specialists, or member organizations.<sup>5</sup> Currently, a financial arrangement disclosure obligation is contained in both PSE Rules 6.40 and 4.18. Specifically, the PSE proposes to consolidate its disclosure rules into PSE Rule 4.18 and cross reference PSE Rule 4.18 in PSE Rule 6.40.<sup>6</sup>

The PSE also proposes to expand the trading restrictions imposed on financially affiliated market makers. Currently, Commentary .01 to PSE Rule 6.40 provides that market makers which maintain existing financial arrangements with other market makers may not bid, offer, purchase, sell, or enter orders in the same option series. First, the PSE proposes to expand the trading restrictions to include members and member organizations. Therefore, a market maker who has a financial arrangement with another member or member organization and the member or member organization having a financial arrangement with that market maker will be subject to the trading restrictions. Second, the PSE proposes to expand the trading restrictions to provide that market makers and affiliated members or member organizations "may not bid, offer, and/or trade in the same trading crowd at the same time \* \* \*." Accordingly, whereas before affiliated market makers could not bid, offer, or trade in the same options series, under the proposed rule they can not bid, offer, or trade in the

<sup>5</sup> Rule 4.18 defines a financial arrangement as one involving: (1) The direct financing of a member's dealings upon the Exchange; (2) any direct equity investment or profit sharing arrangement; or (3) any consideration over the amount of \$5,000 that constitutes a gift, loan, salary, or bonus.

<sup>6</sup> As noted *supra* note 3, the PSE also proposes to include in Rule 4.18 language which is proposed to be deleted from Rule 6.40 dealing with additional disclosure requirements for market makers. Specifically, these requirements require that a market maker must inform the PSE immediately of the intention of any party (1) to change any financial arrangement or (2) to issue a margin call.

same crowd. The proposal, however, provides that affiliated market makers and members can trade in the same crowd if they obtain written approval from two floor officials, which approval shall only be made on the basis of a demonstrated need to trade in the same crowd at the same time. Further, even if allowed to trade in the same crowd, the proposal provides that affiliated market makers and members still may not trade on the same option ticket at the same time or bid, offer, or trade in the same options series at the same time. In addition, the proposal provides that the Options Floor Trading Committee ("OFTC") must still review all approvals by floor officials to let affiliated market makers and members trade in the same crowd. Third, the PSE proposes to amend Exchange Rules 6.84 (the PSE's rule governing joint accounts) and 6.40 to clarify that the above-noted trading restrictions also apply to joint account participants.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),<sup>7</sup> and the rules and regulations thereunder. Specifically, the Commission finds that requiring full disclosure of financial arrangements among PSE market makers, floor brokers, specialists, and member organizations will help the Exchange to better identify and deter potential trading abuses among affiliated PSE members and member organizations. In addition, with such disclosure, the Exchange's ability to monitor the financial condition of its members and member organizations will be enhanced.

The Commission also believes that it is appropriate for a PSE market maker and any of his financially affiliated PSE members or member organizations to be prohibited from bidding, offering, and/or trading in the same trading crowd at the same time. The Commission also believes it is appropriate for participants in joint accounts to be subject to the same trading restriction. Specifically, the Commission believes that the Exchange, in designing the proposed trading restrictions, has appropriately balanced the objective of deterring fraudulent and manipulative conduct with the objective of allowing market makers and other PSE members to participate freely in trading crowds to provide maximum market depth and liquidity. Moreover, the Commission believes that it is consistent with the

<sup>7</sup> 15 U.S.C. 78f(b)(5) (1982).



Act to allow two floor officials to grant exemptions from the trading restrictions. First, an exemption can only be granted if there is a demonstrated need for the financially affiliated entities to trade in the same crowd at the same time. Second, even if allowed to trade in the same crowd at the same time, the affiliated entities can not trade on the same order ticket or offer, bid, and/or trade in the same options series. Lastly, the PSE's OFTC will review each exemption granted.

On balance, the Commission believes that a sufficient number of PSE market makers will continue to be able to respond to trading conditions in all options classes on the Exchange floor, and that, therefore, the proposal should not impact adversely the liquidity of the Exchange's options markets. Moreover, the Commission believes that the imposition of the trading restrictions on financially affiliated market makers, members, and member organizations should help to preclude collusive trading activity and increase public confidence in the markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-PSE-92-13) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>16</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 93-20860 Filed 8-26-93; 8:45 am]  
BILLING CODE 3010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted on or before September 27, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance [S.F. 83], supporting statement, and other

documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

#### FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Training Participation Evaluation Questionnaire.

Form No.: SBA Form 20.

Frequency: On Occasion.

Description of Respondents:

Individuals receiving SBA training and counseling assistance.

Annual Responses: 12,000.

Annual Burden: 3,000.

Dated: August 20, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-20838 Filed 8-26-93; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[GGD-93-053]

### National Boating Safety Advisory Council; Subcommittee Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Personal Watercraft Definition and Requirements to be held on Friday, September 24, 1993, at the Sheraton Hartford Hotel, 315 Trumbull Street, Hartford, Connecticut between 8 a.m. and 5:30 p.m. The agenda for the meeting will be to review the status of various projects undertaken by the subcommittee and initiate any necessary new tasks.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be

obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-1077.

Dated: August 20, 1993.

W.J. Eckel,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-20887 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

**DATES:** The meeting will be held on September 16, 1993, at 9 a.m.

**ADDRESSES:** The meeting will be held at the Nassif Building, Headquarters, Department of Transportation, room 4436, 400 7th Street, SW., Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 16, 1993, at the Nassif Building, Headquarters, Department of Transportation, room 4436, 400 7th Street, SW., Washington, DC 20590. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Autopilot Engagement Working Group, and Flight Crewmember Flight/Duty/Rest Requirements Working Group. Each working group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements

<sup>15</sup> 15 U.S.C. 78a(b)(2) (1982).

<sup>16</sup> 1 CFR 200.30-3(a)(12) (1992).



may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT".

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on August 13, 1993.

David S. Potter,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-20857 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-13-M

**Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Barkley Regional Airport, Paducah, KY**

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Barkley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 27, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131-0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard R. Roof, Airport Manager of the Barkley Regional Airport at the following address: Paducah Airport Corporation, P.O. Box 1131, Paducah, KY 42002-1131.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Barkley Regional Airport under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Cynthia K. Wills, Planner, Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131-0301. (901) 544-3495.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at Barkley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On August 10, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Paducah Airport Corporation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 3, 1993.

The following is a brief overview of the application.

Level of the Proposed PFC: \$3.00

Proposed charge effective date: December, 1993

Proposed charge expiration date: August, 1997

Total Estimated PFC Revenue: \$386,284

Brief description of the proposed project(s):

Impose and Use:

1. Acquire Property Underlying Runway 22 Approach Path
2. Passenger Terminal Improvements
3. Acquire Handicapped Passenger Lift
4. Standardization of Airfield Directional Signage
5. Runway 14/32 Parallel Taxiway and Ramp Extension Project
6. Acquire Property for Eventual Airport Expansion
7. Emergency/Stand-By Electrical Generator
8. Perimeter Airport Service Road

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 (Air Taxi) Operators which enplane less than 50 passengers annually.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Paducah Airport Corporation at 2901 Fisher Road, Paducah, Kentucky.

Issued in Atlanta, Georgia on August 17, 1993.

Mr. Steve Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93-20858 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-13-M

**Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA**

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 27, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, Missouri 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Aviation Director, Des Moines International Airport, at the following address: Des Moines International Airport, 5800 Fleur Drive, Des Moines, Iowa 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Des Moines, Des Moines International Airport, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ellie Anderson, PFC Coordinator, FAA, Central Region, 601 E. 12th Street, Kansas City, Missouri 64106, (816) 426-4728. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines, Iowa, was substantially complete within the requirements of § 158.25 of part 158.



The FAA will approve or disapprove the application, in whole or in part, no later than December 2, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: December 1, 1993.

Proposed charge expiration date: June 30, 1997. Total estimated PFC revenue: \$7,301,300.

Brief description of proposed project(s):

- (1) Baggage Claim Area Expansion;
- (2) Restroom Expansion on Concourses A and C;
- (3) Curbside and Roadway Island Canopy Construction;
- (4) Service Dock and Roadway Modifications.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri, on August 16, 1993.

Michael J. Faltermeier,

Acting Manager, Airports Division, Central Region.

[FR Doc. 93-20856 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-13-M

#### Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hilton Head Island Airport, Hilton Head Island, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 27, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered

in triplicate to the FAA at the following address: Department of Transportation, FAA, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, College Park, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Randolph L. Wood, Jr., Deputy Administrator of the Beaufort County Council, at the following address: Beaufort County Council, P.O. Drawer 1228, Beaufort, South Carolina 29901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Beaufort County Council under § 158.23 of part 158.

#### FOR FURTHER INFORMATION CONTACT:

Mr. James T. Castleberry, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, College Park, Georgia 30349. Telephone number (404) 994-5306.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On August 13, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Beaufort County Council was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 23, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: \$3.00

Proposed charge effective date:

December 1, 1993

Proposed charge expiration date:

December 31, 1998

Total estimated PFC revenue:

\$1,542,300

Brief description of proposed project(s):

Construct Terminal Building, Construct Terminal Apron, Construct Access Road, Construct Parallel Taxiway

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at:

Federal Aviation Administration, Airports Division, 3400 Norman Berry Drive, East Point, Georgia 30344.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Beaufort County Council, 1000 Ribaut Road, Beaufort, South Carolina 29901.

Issued in East Point, Georgia, on August 20, 1993.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93-20848 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-13-M

#### Maritime Administration

[Docket S-902]

#### American President Lines, Ltd., Application for Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application of July 16, 1993, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), so as to permit APL to operate in its existing services six vessels now under construction contracts with foreign shipyards, APL, on May 10, 1993, entered into contracts for the construction of six "C11" cargo liners, three in a German shipyard and three in a Korean shipyard. Delivery is expected during 1995, with the first vessel being delivered in May 1995.

The vessels will be similar to the five C10's in APL present fleet. They will have a service speed of 25 knots and a container capacity of about 4,800 TEU.

APL currently operates three line haul loops in transpacific services:

Five-vessel weekly "Pacific South Express" service, California/Japan-Taiwan-Hong Kong.

Five-vessel weekly "Pacific Island Express" service, California/Guam-Taiwan-Japan.

Five-vessel weekly "Seattle-Japan Express" service, Seattle-Dutch Harbor/Japan-Hong Kong-Taiwan-Korea.

APL states that it will use the vessels as replacements for the overage or inadequate (by reason of size or fuel consumption) vessels in its present fleet. APL further states that it now expects to place them on delivery in the Pacific South Express loop, extended to Singapore, with consequent redeployment of the vessels now employed in that loop to its Seattle-Japan Express loop.

The deployment of its vessels, explains APL, within its service area must, of course, meet changes in trade conditions and the pattern of its



competition. While variation in its deployment plans may be required by the time of vessel delivery, the waiver that it seeks is nevertheless confined to the boundaries of APL's present services. Within that service area, the most likely deployment alternative, APL points out, would be to place the new ships in the Pacific Northwest loop, extending the itinerary to Singapore.

APL argues that it stands in need of these vessels under foreign registry either as an interim measure awaiting reflagging to the U.S. flag and entry into an acceptable, new American maritime program, or, if there be no such program, then as an element of an APL-owned, foreign-flag fleet. APL states that MARAD has already defined and applied principles which show section 804 is wholly consistent with its imperative needs under either alternative.

Concerning special circumstances and good cause, APL states that it has been in transpacific service for almost 150 years. Now vessels are necessary for any continuing liner operation, and must of necessity now be built in foreign shipyards.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on September 27, 1993. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: August 24, 1993.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary, Maritime Administration.  
[FR Doc. 93-20888 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-81-M

### National Highway Traffic Safety Administration (NHTSA)

#### Motor Vehicle Noncompliance and Safety Defect Petition

This notice sets forth the reasons for the denial in part of a petition for a noncompliance and safety defect investigation that was submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*). NHTSA has granted other parts of the petition and has opened a noncompliance investigation, NCI 3288.

On March 29, 1993, Ms. Darlene E. Skelton, President, National Institute of Emergency Vehicle Safety, petitioned the agency to determine whether an order should be issued concerning owner notification and remedy with respect to certain vehicles manufactured by John Russo Industrial, Inc., also doing business as Colet Manufacturing (Colet or the manufacturer). The petitioner claimed that the vehicles failed to comply with Federal Motor Vehicle Safety Standard (FMVSS) Nos. 104, 108, 113, 205, 207, 208, 209, 210, and 217 and alleged that the vehicles contain certain safety-related defects.

The petition referred to a fleet of 16 vehicles although 17 were actually delivered to the San Jose Fire Department. All of the chassis were manufactured by incomplete vehicle manufacturers, and the vehicles were completed by Colet. Of the 17, 15 were completed by Colet from chassis cabs and the remaining two (the "Astrowhiz" and the "Command" vehicles) were completed from a bare chassis. Only two of the allegations involve the 15 vehicles completed from chassis cabs, i.e., emergency lamps mounted in the grill and vehicle labeling.

An information request was sent to Colet to obtain relevant information. The request included a copy of the subject petition. Colet was asked to provide comments on each of the allegations in the petition and to provide test results and other information on which it based certification that the vehicles meet the specific FMVSS. In addition, a NHTSA investigator visited the San Jose Fire Department and Colet to examine the vehicles in question.

The data in the petition, Colet's response to the information response, and information acquired in the vehicle inspection have been analyzed. As described below, NHTSA has granted the petition to conduct an investigation to determine if certain of the vehicles fail to comply with the FMVSS noted.

With respect to the remaining issues, NHTSA has concluded that the petition should be denied.

Unless otherwise noted, the following allegations apply to both the Astrowhiz and Command vehicles built on bare chassis.

I. FMVSS No. 104, "Windshield Washing & Wiping Systems"—The petitioner claims that the driver's line of vision through the windshield is inadequate. Separately, although not an alleged violation of FMVSS No. 104, the petition states that the wiper motors supplied with the vehicles "were not large enough to operate the wipers on a dry surface."

The manufacturer submitted data, including engineering drawings, indicating that the vehicles meet the wiped area requirements of this standard. With respect to the claim that the windshield wiper motors were inadequate, FMVSS No. 104 does not require the wipers to meet performance requirements on a dry surface. Since there are no data to suggest that the vehicles do not comply with FMVSS No. 104, this aspect of the petition is denied.

II. FMVSS No. 113, "Hood Latch Systems"—The petitioner claims that the hood restraint system has neither a primary nor secondary latching system. This aspect of the petition has been granted.

III. FMVSS No. 207, "Seating Systems"—The petitioner states that the seats are anchored with 1/2-inch grade 5 bolts through an aluminum diamond plate and a plywood floor. The petitioner believes that the seats will not meet the performance requirements of the standard, S4.2.

The manufacturer furnished engineering calculations indicating compliance with the performance requirements of this standard. Additionally, a vehicle inspection conducted by a NHTSA investigator did not indicate a potential noncompliance in this regard. Inasmuch as a nonconformity to this aspect of the standard can only be proven by destructive testing, which would not be practical, there is no reason to open a compliance investigation, and this aspect of the petition is denied. Although not covered in the petition, the NHTSA investigator noted that the labeling requirements of S4.4 of the standard did not appear to be satisfied, and this possible noncompliance will be investigated.

IV. FMVSS No. 120, "Tire Selection and Rims for Vehicles Other than Passenger Cars." The allegation relates to all 17 vehicles. The petitioner claims that Colet has attached labels that do not



have all of the required information regarding tire ratings, axle weight, and vehicle weight. This aspect of the petition has been granted.

V. FMVSS No. 108, "Lamps Reflective Devices and Associated Equipment"—The petitioner claims that the headlights are mounted on a post and will rotate laterally on the Astrowhiz vehicle. Further, the petitioner asserts that there is no vertical headlight adjustment and that operators indicate that, due to the height of the vehicle, the lighting supplied is inadequate to illuminate the roadway.

The headlamps are on a ball-type mounting. Such a mounting within itself does not violate FMVSS No. 108. Section S7.8.2 of FMVSS No. 108, states, "Each headlamp shall be installed on a vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim and is accessible for both of those uses without removal of any vehicle parts, except for protective covers removable without the use of tools." Colet supplied certification information from the lamp supplier and a statement to the effect that the headlamps were adjusted to meet Federal and California requirements. Colet has never been advised by a vehicle owner/driver that vehicle lighting was inadequate. There are no data to suggest that the vehicle does not comply with any of the applicable provisions of FMVSS No. 108. Accordingly, this aspect of the petition is denied.

VI. FMVSS No. 208, "Occupant Crash Protection;" No. 209, "Seat Belt Assemblies;" and No. 210, "Seat Belt Assembly Anchorages"—The petitioner states that the upper restraints are mounted on flat pieces of aluminum and lap restraints are mounted to the plywood floor. The petition asserts that the occupant restraints are inadequate and would not meet the tests required by FMVSS Nos. 208, 209, and 210.

The agency's inspection of the vehicles indicate that they have 3-point safety belts in the proper location, in accordance with FMVSS No. 208. The seat belts were certified by the manufacturer as conforming to FMVSS No. 209. Test data, drawings and calculations were submitted indicating conformity to FMVSS No. 210. As was the case regarding FMVSS No. 207, testing for further verification would be destructive and thus would not be practical. Accordingly, this aspect of the petition is denied.

VII. FMVSS No. 217, "Bus Window Retention and Release"—The petitioner claims that the vehicles in question are "bus type" vehicles and alleges that

there are no window releases for the occupants as required in FMVSS No. 217. The petition states that an escape hatch is provided in the roof; however, it is 17" x 24" and the door provided partially blocks the opening.

This standard does not apply because none of the subject vehicles are considered to be a "bus." As defined in 49 CFR 571.3(b), "Bus means a vehicle, except a trailer, with motive power designed for carrying more than 10 persons." Neither vehicle is "designed for carrying more than 10 persons." The Astrowhiz vehicle has fewer than 10 seats. While the "Command" vehicle has more than 10 seating positions, the positions are not used while the vehicle is in motion, since the vehicle is used as a "command" station only when the vehicle is stationary, e.g., at a disaster site for meetings. Accordingly, this aspect of the petition is denied.

VIII. FMVSS No. 205, "Glazing Materials"—The petitioner claims that the windshield is a flat piece of glass material measuring 43" x 84."

There is no identifiable marking on the windshield which indicates that it is laminated safety glass. Accordingly, this aspect of the petition has been granted. The investigation will also consider whether the glazing meets the light transmittance requirements of the standard.

IX. The petition also alleged other "items may violate the intent of FMVSS."

A. The petitioner claims that the stainless steel body side panels, measuring approximately 8 ft x 13 ft, are lifted hydraulically to provide access to equipment carried on the vehicle. Once in the air, there are no holding valves to serve as a safety mechanism in the event of a failure in the hydraulic system.

Colet furnished information concerning safety devices in the hydraulic system to ensure that the doors could not fall. It indicated that there is a hydraulic lock in the pump and a restrictor safety valve in the cylinder which results in a design safety factor of 20 to 1. The Fire Department has not indicated any problems with this device. Accordingly, this aspect of the petition is denied.

B. The petition claims that the transmission gear selector provided by Colet does not provide a neutral position, and requires a person to crawl underneath the vehicle to manually shift the transmission if the motor is shut off while the transmission is in gear.

Although a potential inconvenience, the allegation regarding the transmission gear selector was not

supported by data indicating a safety concern. The manufacturer has provided a copy of its Hazmat service manual which indicates that a neutral position exists and provides instructions on the use of the gear selector. It also indicates that operators should not shift gears if the engine is not running. Accordingly, this aspect of the petition is denied.

X. The petition claims that the emergency light bar is mounted in the grill in several vehicles and is part of the hood latching system.

The manufacturer replied that it is unaware of any problem in this regard. The hood latch systems on all vehicles except for the Astrowhiz and the Command vehicle were supplied by the incomplete vehicle manufacturer. Without additional information there is no reason to believe that this condition constitutes a failure to comply or safety defect. Pictures submitted by the manufacturer and an examination of several vehicles did not indicate that the light bar was part of the hood latching system. Accordingly, this aspect of the petition is denied.

XI. The petition claims that the passenger side door on the Command unit pops open when the vehicle is traveling on the road.

The allegation that the side door in the Command vehicle pops open has never been reported by the Fire Department to the manufacturer. The door is not covered by FMVSS No. 206 because it does not lead into a compartment containing one or more designated seating positions. Moreover, in view of the fact that no one may ride in the back of the vehicle while it is in motion, this alleged condition even if proven, would apparently not constitute a safety-related defect. Accordingly, this aspect of the petition is denied.

On the basis of the foregoing, NHTSA has opened a noncompliance investigation with respect to certain of the petitioner's allegations, NCI 3288. However, NHTSA has concluded that there is not a reasonable possibility that a recall order concerning noncompliance or safety defects in relation to the remainder of the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether noncompliances or safety-related defects exist in these areas does not appear to be warranted. Therefore, the petition has been denied with respect to those aspects.

Authority: 15 U.S.C. 1410a, delegations of authority at 49 CFR 1.50(a) and 501.8.



Issued on August 24, 1993.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 93-20889 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-58-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

August 20, 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: 1545-0885.

Regulation ID Number: LR-108-84

Temporary, CO-23-89 (NPRM)

(Formerly LR-183-84).

Type of Review: Extension.

Title: Losses, Expenses, and Interest in Transactions Between Related Taxpayers.

Description: Coverage of this regulation includes the deferral and restoration of loss on the sale or exchange of property from one member of a controlled group to another member under section 267(f)(2) Internal Revenue Code as added by section 174(b)(2) of the Tax Reform Act of 1984.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Recordkeepers: 2,001.

#### Estimated Burden Hours Per

Recordkeeper: 3 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 6,001 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.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 93-20799 Filed 8-26-93; 8:45 am]

BILLING CODE 4830-01-P

### Office of Thrift Supervision

#### Crestline Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (A) and (B) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Crestline Federal Savings and Loan Association, Crestline, Ohio ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 30, 1993.

Dated: August 23, 1993.

By the Office of Thrift Supervision.

**Kimberly M. White,**

*Corporate Technician.*

[FR Doc. 93-20819 Filed 8-26-93; 8:45 am]

BILLING CODE 6720-01-M

#### Irvington Federal Savings Bank, Glen Burnie, MD; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the

Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Irvington Federal Savings Bank, Glen Burnie, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 20, 1993.

Dated: August 23, 1993.

By the Office of Thrift Supervision.

**Kimberly M. White,**

*Corporate Technician.*

[FR Doc. 93-20820 Filed 8-26-93; 8:45 am]

BILLING CODE 6720-01-M

### [AC-42: OTS No. 6012]

#### First Federal Savings and Loan Association of Thibodaux, Thibodaux, LA; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 18, 1993, the Deputy Director for Regional Operations approved the application of First Federal Savings and Loan Association of Thibodaux, Thibodaux, Louisiana, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a merger application. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 West John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 23, 1993.

By the Office of Thrift Supervision.

**Kimberly M. White,**

*Corporate Technician.*

[FR Doc. 93-20818 Filed 8-26-93; 8:45 am]

BILLING CODE 6720-01-M



# Sunshine Act Meetings

Federal Register

Vol. 58, No. 165

Friday, August 27, 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).

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 9:30 a.m., Wednesday, September 1, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

### MATTERS TO BE CONSIDERED:

1. Proposals regarding publication requirements for merger applications.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-20955 Filed 8-25-93; 11:31 am]

BILLING CODE 6210-01-P

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** Approximately 11:00 a.m., Wednesday, September 1, 1993, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Proposals regarding a Federal Reserve Bank's renovation requirements.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-20956 Filed 8-25-93; 11:31 am]

BILLING CODE 6210-01-P

## LEGAL SERVICES CORPORATION

Board of Directors Meetings

**TIME AND DATE:** The Legal Services Corporation Board of Directors' Provision for the Delivery of Legal Services; Office of the Inspector General Oversight; and, Audit and Appropriations Committees will meet on September 9, 1993. The meetings will commence at 2:00 p.m. in the following order, with the next committee meeting commencing immediately following adjournment of the prior committee meeting until all business has concluded. The meetings are open to the public.

1. Provision for the Delivery of Legal Services Committee;
2. Office of the Inspector General Oversight Committee; and
3. Audit and Appropriations Committee.

**PLACE:** The Hilton Plaza Inn, One East 45th Street, The Regency West Ballroom, Kansas City, Missouri, (816) 753-7400.

**STATUS OF MEETINGS:** Open.

### PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE MEETING:

### MATTERS TO BE CONSIDERED:

#### OPEN SESSION:

1. Approval of Agenda.
2. Approval of June 27, 1993 Meeting Minutes.
3. Consideration of Status Report on Request for Proposals for Migrant Ombudsman Demonstration Projects.
  - a. Consideration of Report on the Availability of Funds for Supplemental Grants for Current Recipients of Corporation Migrant Funding.
4. Consideration of Status Report on Grantee Attorney Recruitment and Retention Effort Review.
5. Consideration of Status Report on Timekeeping Grant Solicitation.

6. Consideration of Status Report on Meritorious and Innovative Grant Projects.
7. Consideration of Status Report on Emergency Grant Awards.

### OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE MEETING:

#### MATTERS TO BE CONSIDERED:

##### OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of February 21, 1993 Meeting.
3. Approval of Minutes of June 28, 1993 Meeting.
4. Consideration of Inspector General's Value and Financially-Focused Report on the Office of the Inspector General's Activities for the Past 18-Month Period.

##### CLOSED SESSION:

5. Consideration of Assessment of the Inspector General's Job Performance During the Past 12-Month Period.

##### OPEN SESSION: (Resumed)

6. Consideration of Other Business.
7. Consideration of Motion to Adjourn.

### AUDIT AND APPROPRIATIONS COMMITTEE MEETING:

#### MATTERS TO BE CONSIDERED:

##### OPEN SESSION:

1. Approval of Agenda.
2. Approval of Draft Minutes of June 28, 1993 Meeting.
3. Consideration and Review of the Budget and Expenses through June 30, 1993 and Projections for the Three-Month Period of July 1, 1993 to September 30, 1993.
  - a. Consideration of Need for Internal Budgetary Adjustments.
  - b. Consideration of Reallocation of Fiscal Year 1993 Consolidated Operation Budget.
4. Consideration and Review of the Corporation's Consolidated Operating Budget, Expenses, and Other Funds Available for the Ten-Month Period Ending July 30, 1993.
5. Consideration of proposed Fiscal Year 1994 Management and Administration Budget.
6. Consideration of proposed Fiscal Year 1995 Consolidated Operating Budget.
7. Consideration of Staff Report on the Possible Use of Punitive Damage Awards, or Portions Thereof, for the Provision of Civil Legal Services to the Indigent.
8. Consideration of Status Report on Leasing the Corporation's Former Headquarters Office Space.
9. Consideration of Status Report on Effort to Secure Corporation Funds.

### CONTACT PERSON FOR INFORMATION:

Patricia Batie (202) 336-8800.



Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date Issued: August 25, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93-20979 Filed 8-25-93; 2:29 pm]

BILLING CODE 7050-01-M

#### LEGAL SERVICES CORPORATION

Board of Directors Meeting

**TIME AND DATE:** The Legal Services Corporation Board of Directors will meet September 11, 1993. The meeting will commence at 9:00 a.m. and continue until all business has been concluded.

**PLACE:** The Hilton Plaza Inn, One East 45th Street, The Regency West Ballroom, Kansas City, Missouri, (816) 753-7400.

#### BOARD OF DIRECTORS MEETING:

**STATUS OF MEETING:** *Open*, except that a portion of the meeting will be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on June 28, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters as well as conduct his annual performance assessment. Finally, the Board will consult with the President on internal personnel and operational matters as well as conduct his annual performance assessment. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552(b)(2)(5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), (f), and (h)].<sup>1</sup> The

closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

#### MATTERS TO BE CONSIDERED:

##### OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 28, 1993 Meeting.
3. Presentation by Directors of Corporation-Funded Programs in the State of Missouri Regarding the Legal Needs of the Indigent in Missouri.
4. Chairman's and Members' Reports.
5. Consideration of Proposed Resolution Modifying the Service Arrangement Under the Corporation's Retirement Plan.
6. Consideration of Proposed Revisions to 45 C.F.R. Part 1602.
7. Consideration of Operations and Regulations Committee Report.
8. Consideration of Office of the Inspector General Oversight Committee Report.
9. Consideration of Provision for the Delivery of Legal Services Committee Report.
10. Consideration of Audit and Appropriations Committee Report.
11. Consideration of Whether to Release to a Third Party a Copy of the June 17, 1993 Memorandum of the Corporation's General Counsel to the Committee on the Possible Use of Punitive Damage Awards, or Portions Thereof, for the Provision of Civil Legal Services to the Indigent.
12. President's Report.
13. Inspector General's Report.

##### CLOSED SESSION:

14. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
15. Consideration of Annual Assessment of Job Performance of the Corporation's Inspector General.
16. Consultation by Board with the President on Internal Personnel and Operational Matters.
17. Consideration of Annual Assessment of Job Performance of the Corporation's President.

on the above-noted date(s), the closing is authorized as noted in the Federal Register notice(s) corresponding to that/those Board meeting(s).

18. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.

19. Approval of Minutes of Executive Session Held on June 28, 1993.

#### OPEN SESSION: (RESUMED)

20. Consideration of Other Business.

#### CONTACT PERSON FOR INFORMATION:

Patricia Batie (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date Issued: August 25, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93-20980 Filed 8-25-93; 2:29 pm]

BILLING CODE 7050-01-M

#### NUCLEAR REGULATORY COMMISSION

**DATE:** Monday, August 30, 1993.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

#### MATTERS TO BE CONSIDERED:

Monday, August 30

10:00 a.m.

Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)  
(Contact: Shelly Schwartz, 301-504-2325)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 504-1661.

Dated: August 24, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-20947 Filed 8-25-93; 10:33 am]

BILLING CODE 7590-01-M

<sup>1</sup> As to the Board's consideration and approval of the draft minutes of the executive session(s) held



# Corrections

Federal Register

Vol. 58, No. 165

Friday, August 27, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 675

[Docket No. 921185-3021; I.D. 081193B]

#### Groundfish of the Bering Sea and Aleutian Islands Area

##### *Correction*

In rule document 93-19985 beginning on page 44136 in the issue of Thursday, August 19, 1993, make the following correction:

On page 44137, in the 1st column, in the last paragraph, in the 11th line from the bottom, "BAS" should read "BS".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control Prevention

#### Variability of Respiratory Tract Deposition in Workers: Meeting

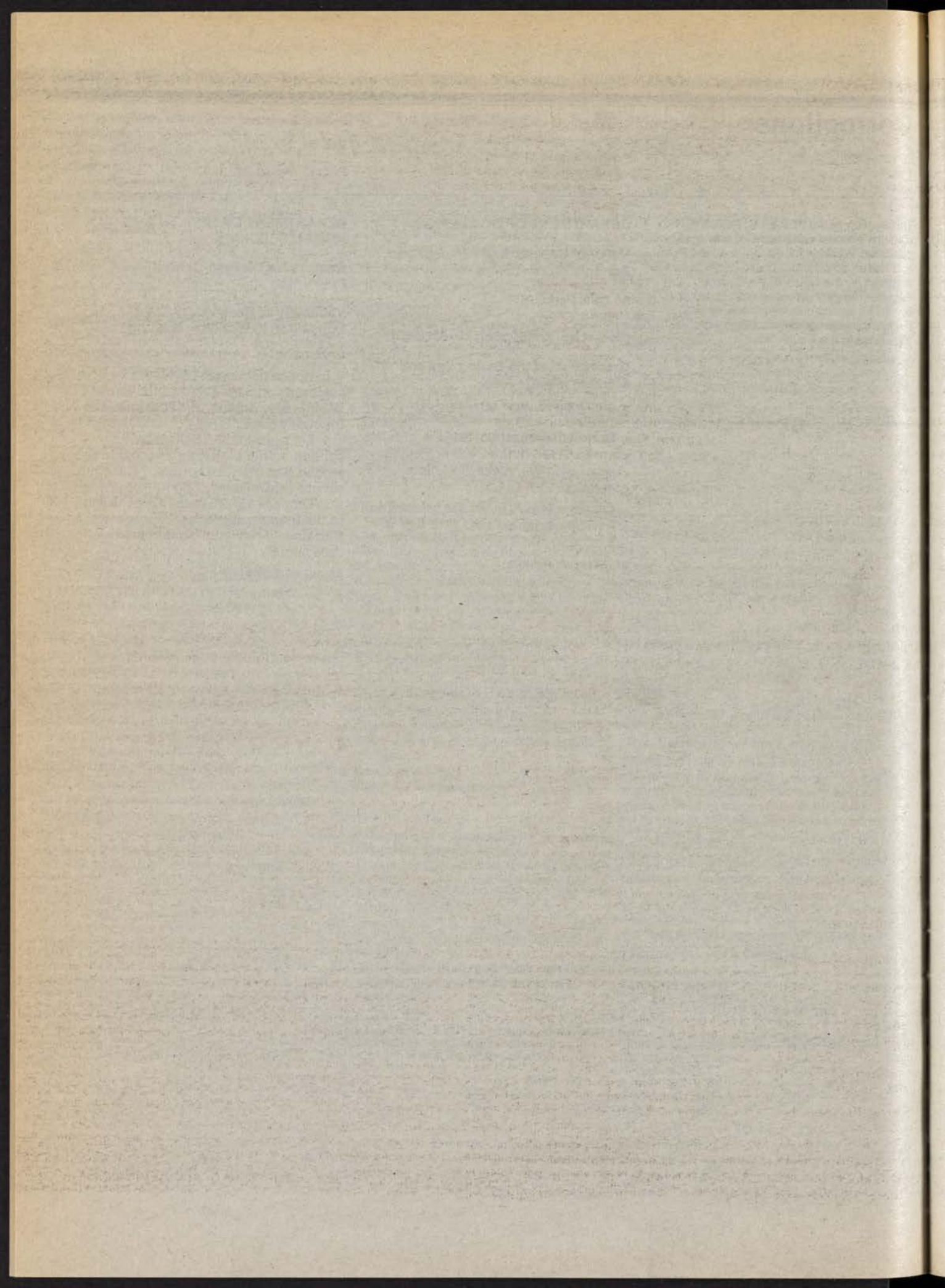
##### *Correction*

In notice document 93-19936 beginning on page 43897 in the issue of Wednesday, August 18, 1993, make the following corrections:

1. On page 43897, in the third column, in the heading above and in the second line from the bottom, "Trace" should read "Tract".
2. On page 43898, in the first column, in the fourth paragraph (*Purpose*), in the fifth line, "academic" should read "academia".

BILLING CODE 1505-01-D







**Register  
Federal Thrift**

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Friday  
August 27, 1993

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**Part II**

**Federal Retirement  
Thrift Investment  
Board**

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5 CFR Part 1650  
Separation Due to Reduction in Force  
Regulations; Interim Rule



**FEDERAL RETIREMENT THRIFT  
INVESTMENT BOARD**
**5 CFR Part 1650**
**Separation Due to Reduction in Force  
Regulations**

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

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

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing amendments to regulations on withdrawing funds from the Thrift Savings Plan (TSP) to state the withdrawal methods available to participants who separate from Government employment due to a reduction in force (RIF).

Public Law 102-484 provided participants who separate from Government employment due to a RIF with the same withdrawal options that are available to employees who separate with eligibility for immediate basic retirement benefits as defined in the amended regulations. Public Law 102-484 also conformed the spousal notice and waiver requirements applicable to participants who separate from Government employment due to a RIF with those applicable to other participants who separate with eligibility for immediate basic retirement benefits.

These amended regulations also include changes that clarify a participant's withdrawal rights under the TSP based on their eligibility for basic retirement benefits.

**DATES:** These interim rules are effective July 1, 1993. Comments must be received on or before October 26, 1993.

**ADDRESSES:** Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Michelle C. Malis (202) 942-1661.

**SUPPLEMENTARY INFORMATION:** Public Law 102-484 provides participants who separate from Government employment due to a RIF pursuant to regulations issued under 5 U.S.C. 3502(a) or procedures issued under 5 U.S.C. 3595(a) with all of the TSP withdrawal options available to participants who separate from Government employment with eligibility for immediate basic retirement benefits. A definition of "separation due to a RIF" has been added to the definitions contained in 5 CFR 1650.2. The definition reflects the language added to 5 U.S.C. 8433(b) by Public Law 102-484.

Subsection (c) has been added to 5 CFR 1650.5 to reflect the provisions of Public Law 102-484 giving participants who separate due to a RIF the same withdrawal options as those that are available to participants who separate with immediate basic retirement eligibility. Subsection (c) further reflects the provision in Public Law 102-484 that conformed the spousal rights applicable to participants who separate due to a RIF with those applicable to participants who separate with eligibility for immediate basic retirement benefits. As is the case for participants eligible for immediate basic retirement benefits, the spousal protections applicable to participants who separate due to a RIF vary depending upon the basic retirement system under which they are covered (e.g., FERS or CSRS). Public Law 102-484 states that its provisions shall apply to separations due to a RIF occurring after December 31, 1993, or such earlier date as prescribed by the Executive Director in regulations. Subsection (c) establishes that the legislation applies to separations due to a RIF occurring after June 30, 1993.

The remaining amendments to the regulations are designed to clarify, without substantive change, the withdrawal options available to participants based on their retirement eligibility.

A definition of "basic retirement benefits" has been added to 5 CFR 1650.2. The first five paragraphs of the definition list five types of benefits, eligibility for which triggers withdrawal rights under the TSP (FERS and CSRS Retirement and Disability, Federal Employees' Compensation Act (FECA), and Foreign Service Retirement and Disability and Foreign Service Pension System). Although workers' compensation (FECA) is not a retirement benefit, it is included in this definition because, under 5 U.S.C. 8433, separation with eligibility for workers' compensation (FECA) benefits entitles a participant to the same TSP withdrawal options as participants who separate with eligibility for immediate basic FERS or CSRS retirement benefits. The sixth paragraph of the definition is designed to clarify that "basic retirement benefits" also includes those relatively few participants who do not fit into any of the first five categories but who may be eligible for certain benefits that trigger their right to exercise withdrawal options under the TSP.

The definition of "basic retirement eligibility" has been amended to mean eligibility for any of the basic retirement benefits referred to in the definition of that term.

Section 1650.0 has been split into subsections (a) and (b), and the title of § 1650.4 has been amended to more accurately reflect the differences in the withdrawal options available to participants, depending on whether they separate without eligibility for basic retirement benefits, with eligibility for deferred basic retirement benefits, or with eligibility for immediate basic retirement benefits.

Subject to the automatic cashout provisions contained in subpart C of part 1650, participants who separate from Government employment without eligibility for basic retirement benefits are required to transfer their accounts to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. The heading of § 1650.4 has been amended to clarify that it applies to participants who separate without eligibility for basic retirement benefits. Participants with deferred or immediate eligibility for basic retirement benefits may elect either to receive an immediate TSP annuity, or to defer the commencement of their annuity, or to transfer their account to an IRA or other eligible retirement plan. They may also elect to receive their accounts in one payment or in substantially equal monthly payments. However, for participants with eligibility for immediate basic retirement benefits, the equal payment(s) may commence at any time, whereas, for participants with eligibility for deferred basic retirement benefits, the payment(s) cannot commence until the date they are eligible to receive their basic retirement benefits. We note that eligibility for disability retirement or workers' compensation benefits is always immediate. The amended subsections (a) and (b) of § 1650.5 reflect the distinction between TSP withdrawal options available to participants eligible for deferred basic retirement benefits and those eligible for immediate basic retirement benefits.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

**Waiver of Notice of Proposed  
Rulemaking**

Pursuant to 5 U.S.C. 553(b)(B), I find that in order to provide TSP withdrawal options to persons separating from Government service due to a RIF as soon



as possible, good cause exists for waiving the general notice of proposed rulemaking.

**List of Subjects in 5 CFR Part 1650**

Employee benefit plans, Government employees, Pensions, Retirement, Federal Retirement Thrift Investment Board, Francis X. Cavanaugh, Executive Director.

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

**PART 1650—[AMENDED]**

1. The authority citation for part 1650 is revised to read as follows:

**Authority:** 5 U.S.C. 8351, 8433, 8434(a)(2)(E), 8434(b), 8435, 8436, 8467, 8474(b)(5), 8474(c)(1), and sec. 4437, Pub. L. 102-484, 106 Stat. 2724.

2. Section 1650.2 is amended by revising the definition of the term *basic retirement eligibility* and by adding definitions for *basic retirement benefits* and *separation due to a RIF* as set forth below:

**§ 1650.2 Definitions.**

- Basic retirement benefits* means:
- (a) An annuity under subchapter II of chapter 84 of title 5, United States Code;
  - (b) An annuity under subchapter III of chapter 83 of title 5, United States Code;
  - (c) Disability benefits under subchapter V of chapter 84 of title 5, United States Code;
  - (d) Benefits under subchapter I of chapter 81 of title 5, United States Code;
  - (e) An annuity under part I or part II of subchapter VIII of chapter 52 of title 22, United States Code;
  - (f) Any other benefits, eligibility for which, pursuant to statute or regulation,

establishes an employee's entitlement to make a TSP withdrawal election.

*Basic retirement eligibility* means eligibility for basic retirement benefits.

*Separation due to a RIF* means separation from Government employment due to a reduction in force pursuant to regulations issued under 5 U.S.C. 3502(a) or procedures issued under 5 U.S.C. 3595(a).

3. The heading of § 1650.4 is revised to read as follows:

**§ 1650.4 Employees not eligible for basic retirement benefits.**

4. Section 1650.5 is revised to read as follows:

**§ 1650.5 Employees eligible for basic retirement benefits.**

(a) *Deferred eligibility.* Subject to the rights of spouses set forth in subpart G of this part, a participant who separates from Government employment and is only eligible to receive basic retirement benefits at a later date may elect to withdraw his or her account by any of the following withdrawal methods:

- (1) An immediate annuity as described in subpart F of this part.
- (2) An annuity as described in subpart F of this part, to commence on the date a participant specifies, but not later than April 1 of the year following the year in which the participant becomes 70½ years old.
- (3) A deferred withdrawal of the balance in the account in one payment or in substantially equal monthly payments, to be paid or to begin no earlier than the date on which the participant is eligible to receive basic retirement benefits and no later than April 1 of the year following the year in

which the participant becomes 70½ years of age.

(4) Transfer to an eligible retirement plan.

(b) *Immediate eligibility:* Subject to the rights of spouses set forth in subpart G of this part, a participant who separates from Government employment and is eligible to receive basic retirement benefits immediately may elect to withdraw his or her account balance by any of the following withdrawal methods:

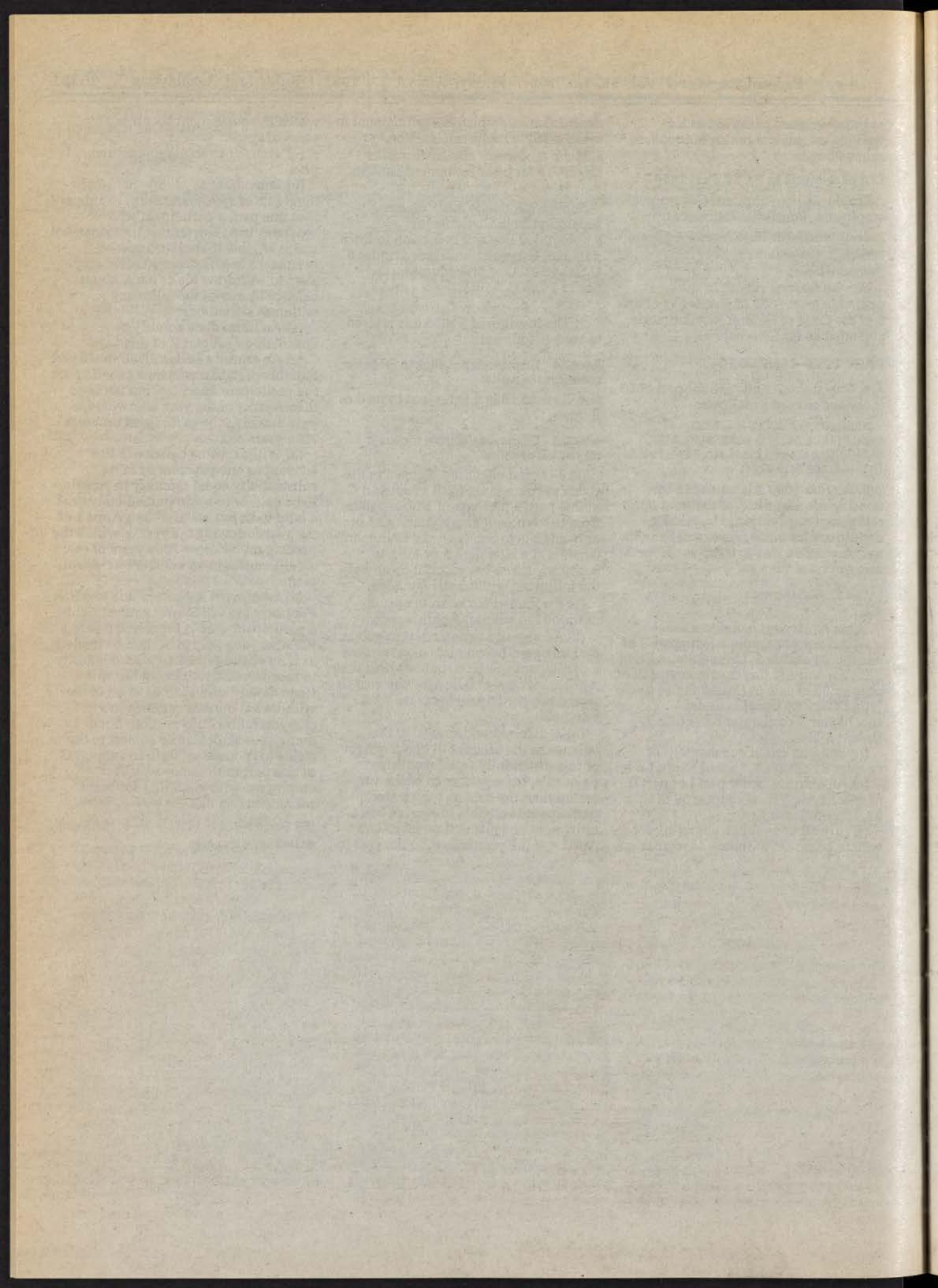
- (1) An immediate annuity as described in subpart F of this part.
- (2) An annuity as described in subpart F of this part, to commence on a date the participant specifies, but not later than April 1 of the year following the year in which the participant becomes 70½ years old.

(3) Withdraw the balance in the account in one payment or in substantially equal monthly payments, to be paid or to begin immediately or at a later date, but no later than April 1 of the year following the year in which the participant becomes 70½ years of age.

(4) Transfer to an eligible retirement plan.

(c) *Employees separated due to a RIF.* For purposes of TSP withdrawal rights, a participant who is separated due to a RIF after June 30, 1993, shall be treated as if he or she separated with eligibility to receive basic retirement benefits immediately, and shall have all of the withdrawal options set forth in paragraph (b) of this section. Such employees shall also be subject to the rights of spouses set forth in subpart G of this part in the same way as employees with eligibility for basic retirement benefits.







# **Federal Register**

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**Friday  
August 27, 1993**

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## **Part III**

### **Department of Housing and Urban Development**

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**ECHO Housing Demonstration Program  
Under Section 202, Funding Availability  
and Program Guidelines; Notice**



**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of Assistant Secretary for  
Housing—Federal Housing  
Commissioner**

[Docket No. N-93-3649; FR-3403-N-01]

**Funding Availability for Fiscal Year  
1993, and Notice of Program  
Guidelines for the ECHO Housing  
Demonstration Program Under Section  
202**

**AGENCY:** Office of the Assistant  
Secretary for Housing, HUD.

**ACTION:** Notice of funding availability  
(NOFA); and Notice of program  
guidelines for ECHO housing  
demonstration program.

**SUMMARY:** This notice announces HUD's  
funding for the elder cottage housing  
opportunity units (ECHO housing)  
demonstration program for the elderly,  
and provides HUD's guidelines for this  
demonstration program. The ECHO  
housing demonstration program is a  
section 202 elderly housing program  
which will allow a nonprofit owner to  
place a small, self-contained, barrier  
free, energy efficient and removable  
dwelling unit (ECHO unit) adjacent to  
the existing one to four family home of  
a friend or relative of an eligible elderly  
person.

The purpose of this demonstration  
program is to determine the feasibility  
of incorporating ECHO units into the  
section 202 capital advance program.  
The demonstration will be conducted in  
Regions 2, 4 and 7.

This NOFA contains information for  
nonprofit sponsors regarding the  
application process, including the  
application requirements, the deadline  
for filing applications, and the selection  
process, including how selections will  
be made.

**DATES:** An application may be submitted  
immediately after publication of this  
NOFA, and must be submitted by 4 p.m.  
e.s.t. on October 26, 1993.

Applications will be funded on a first-  
come, first-served basis. In cases where  
additional time is allowed under this  
NOFA to correct technical deficiencies  
in an application, the initial date and  
time of receipt will determine first-  
come, first-served eligibility. Every  
effort should be made to submit  
applications as soon as possible after the  
publication of this NOFA; furthermore,  
the above stated deadline is firm as to  
date and hour. In the interest of fairness  
to all applicants, the Department will  
treat as ineligible for consideration any  
application that is received after the  
deadline. Applicants should take this

practice into account and make early  
submission of their applications to  
avoid any risk of loss of eligibility  
brought about by unanticipated delays  
or other delivery-related problems.

**ADDRESSES:** Application packages may  
be requested from Margaret Milner,  
Acting Director, Office of Elderly and  
Assisted Housing, Room 6130,  
Department of Housing and Urban  
Development, 451 Seventh Street SW.,  
Washington, DC 20410, telephone (202)  
708-4542. Hearing or speech-impaired  
individuals may call HUD's TDD  
number (202) 708-4594. (These  
telephone numbers are not toll-free.)  
Completed applications must be  
submitted to: ECHO Demonstration,  
Assisted Elderly and Handicapped  
Housing Division, Room 6116,  
Department of Housing and Urban  
Development, 451 Seventh Street SW.,  
Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:**  
Margaret Milner, Acting Director, Office  
of Elderly and Assisted Housing, room  
6130, Department of Housing and Urban  
Development, 451 Seventh Street SW.,  
Washington, DC 20410, telephone (202)  
708-4542. Hearing or speech-impaired  
individuals may call HUD's TDD  
number (202) 708-4594. (These  
telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

**Paperwork Burden**

In accordance with the Paperwork  
Reduction Act of 1980 (44 U.S.C. 3501-  
3520), the information collection  
requirements have been assigned OMB  
Control Number 2502-0267.

*I. Purpose and Substantive Description*

**A. Authority**

The ECHO housing demonstration  
program is authorized by section 806(b)  
of the Cranston-Gonzalez National  
Affordable Housing Act (Pub. L. 101-  
625, approved November 28, 1990;  
hereinafter referred to as NAHA), as  
amended by section 602(d) of the  
Housing and Community Development  
Act of 1992 (Pub. L. 102-550, approved  
October 28, 1992).

The regulations governing the ECHO  
housing demonstration program are  
codified at 24 CFR part 889.

**B. Background**

The ECHO housing demonstration  
program is a demonstration program  
which will allow a nonprofit section  
202 owner to place a small, free-  
standing, barrier free, energy efficient,  
and removable dwelling unit (ECHO  
unit) adjacent to the existing single  
family home of a friend or relative of an  
eligible elderly person.

The purpose of the ECHO housing  
demonstration program is to determine  
the feasibility of incorporating ECHO  
units into the section 202 capital  
advance program. Specifically, the  
Secretary is directed to examine the  
durability of ECHO units, and determine  
whether the ECHO units are durable  
enough for continued use over the life  
of a capital advance (40 years). The  
demonstration also is designed to  
provide a basis for evaluating the factors  
that determine the success or failure of  
a Sponsor in providing ECHO housing,  
and the extent to which those factors  
differ from the ones that are used to  
evaluate the Sponsors who apply in the  
regular program.

Thus, each applicant must submit  
certain plans, information about the  
applicant organization, and similar  
information detailing the planned  
program. Providing this information is a  
threshold requirement for funding; this  
will ensure that each Sponsor has done  
the necessary planning to be prepared to  
implement the program, and further will  
provide a base of program detail that  
will be used in the evaluation of the  
demonstration.

This Proposed Program Plan (exhibit  
12), described in section III.B. of this  
NOFA, will not be evaluated at the  
application stage because the  
Department has no basis on which to  
assume that Sponsors who rate highly  
on the standard Section 202 rating  
criteria would be the best organizations  
to undertake this particular  
demonstration. In addition, the  
Department wishes to avoid screening  
out flexible, innovative approaches by  
eligible but nontraditional Sponsors.  
Rather, the information in Exhibit 12  
will become the record of the Sponsor's  
demonstration plan against which the  
performance of the Owner and the  
results of the demonstration can be  
weighed. This approach will help to  
ensure that as broad a range of factors  
as possible are demonstrated.

The concept of elder cottages  
originated in Australia where the  
government owns approximately 5000  
"granny flats." The Australian  
government distributes the granny flats  
to elderly persons, who use them for as  
long as needed. After the elderly person  
no longer needs the elder cottage, the  
elder cottage is moved to another site for  
use by someone else.

The legislative history reveals that the  
ECHO housing demonstration program  
is modeled in part after the Australian  
granny flat. The house report provides  
in relevant part:

Rather than building or acquiring and  
renovating multifamily buildings, an eligible



sponsor would be able to purchase ECHO units and install them for eligible elderly persons, adjacent to a relative's existing home. With an ECHO unit, the elderly can remain independent while living near their relatives. When the unit is no longer needed, it can be moved to another site to serve another elderly person.

H.R. Rep. No. 559, 101st Cong., 2nd Sess. 44 (1990)

The ECHO housing demonstration program requires that each ECHO unit be placed adjacent to the existing single family home of a close family friend or relative. While the statutory language merely refers to an existing single family dwelling, the legislative history shows that Congress envisioned that ECHO units would be placed adjacent to a relative's existing single family home. The Department believes that some situations may exist where a close family friend is willing to provide a parcel of land, and allow an ECHO unit to be placed adjacent to the family's home. Consequently, ECHO units may also be placed adjacent to the existing single family home of a close family friend.

Moreover, because section 806(b) of NAHA requires that ECHO units be placed adjacent to an existing 1- to 4-family dwelling, this demonstration program does not cover a development consisting solely of ECHO units.

In accordance with section 806(b)(2) of NAHA, the Department will award up to 100 ECHO units; however, because this is a small demonstration program involving no more than 100 units of ECHO housing, the Department will not conduct the demonstration on a nationwide basis.

The competition for the ECHO housing demonstration program will be open in Regions 2, 4 and 7; however, the Department will not award any region more than ECHO units, unless not enough eligible applicants from other regions apply for those units. In selecting regions 2 and 7, the Department has considered: (1) The production capacity of modular home manufacturers and the proximity of the regions to the modular home manufacturers; and (2) the availability of nonprofit entities and communities that are educated about and receptive towards the concept of ECHO housing. However, in designing this demonstration program, the Department is mindful that the purpose of this demonstration program is to learn whether the section 202 program is an efficient vehicle for conducting the ECHO housing program. Accordingly, the Department has also selected a market with an unknown capacity (region 4) for ECHO housing units.

#### C. Allocation Amounts

Section 806(b)(2) of NAHA requires that the Department reserve from amounts available for fiscal years 1993 and 1994 under section 202 of the Housing Act of 1959, a sufficient amount to fund at least 100 units under this demonstration program. The Department has elected to fund all 100 units from fiscal year 1993, unless not enough eligible applicants apply. The Department has allocated \$4,533,632 to cover these 100 ECHO units.

#### D. Eligibility

The only eligible applicants under this program are private, nonprofit organizations and nonprofit consumer cooperatives. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. In this competition, Sponsors must design projects with between 10 and 20 ECHO units. This demonstration program does not cover the refinancing of existing ECHO units.

The Department will award up to 100 ECHO units. The competition for the ECHO housing demonstration program will be open in Regions 2, 4 and 7; however, the Department will not award any region more than 40 ECHO units, unless not enough eligible applicants from other regions apply for those units.

#### E. Selection Criteria

In order to be considered for funding, an application must successfully complete technical processing. Applicants successfully completing technical processing will be funded on a first-come, first-served basis, as long as a region has not used up its allocation of 40 units (unless not enough eligible applicants from other regions apply for those units). HUD headquarters will ensure that all applications (including copies) are date and time-stamped immediately upon receipt. HUD headquarters will sort applications in chronological order according to the date and time stamp placed on the application.

For example, suppose that the first three applicants which have successfully completed technical processing are from Region 2, and each applicant has applied for 20 units of ECHO housing for a total of 60 units of ECHO housing in Region 2. The first two applicants would be funded, while the third applicant would not be selected since Region 2 would have used up its maximum allocation of 40 units. Suppose, however, using this same example, that the Department awarded a combined total of only 40 ECHO units in Regions 4 and 7 (40

ECHO units Regions 4 and 7, plus 40 units in Region 2 for a total award of 80 ECHO units). In this case, the third applicant in Region 2 would be funded for the 20 units since the Department has elected to award 100 ECHO units.

As a final example, suppose that in Region 2, the first applicant only applied for 10 units, while the second and third applicants each applied for 20 units for a total of 50 units in Region 2. The result in this second example is that the third applicant would be given the option of being funded for 10 units. If the third applicant does not opt for funding of the 10 ECHO units, then the third applicant would be rejected, and the fourth applicant would be funded, subject to the same limitations discussed above.

#### II. Application Process

All applications for the ECHO housing demonstration program submitted by eligible sponsors must be filed with: ECHO Demonstration, Assisted Elderly and Handicapped Housing Division, Room 6116, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, and must contain all exhibits required by this notice. An applicant must submit an original and 2 copies of the application. Application packages can be obtained from Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

No application will be accepted after 4 p.m. E.S.T. on October 26, 1993, unless that date and time is extended by a Notice published in the *Federal Register*. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

#### III. Checklist of Application Submission Requirements

##### A. In General

Each application shall include all of the information, materials, forms, and exhibits listed below in paragraph B and



must be indexed and tabbed. HUD Headquarters will base its determination of the eligibility of the Sponsor for a reservation of ECHO housing capital advance funds on the information provided in the application.

In preparing applications, applicants may use information and exhibits previously prepared for prior applications under section 202, section 811 or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the section 202 or section 811 programs; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

#### B. Application Contents

1. Form HUD-92015-CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner and which includes a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending date of each person's term.

3. CHAS certification. The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved CHAS for FY 1994 (or for FY 1993, where the provisions of the next paragraph apply). The certification must be made by the unit of general local government if it is

required to have, or has, a complete CHAS. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated CHAS, by the unit of general local government if it is willing to prepare such a CHAS. All CHAS certifications must be made by the public official responsible for submitting the CHAS to HUD, or his or her authorized representative. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided below.

If the certification will be made by a jurisdiction required to have a complete CHAS for FY 1994, but the CHAS has not yet been submitted to HUD by the application submission deadline, the certification may be made with respect to the jurisdiction's CHAS for the prior fiscal year, as provided in section 91.80(a)(2) of the CHAS regulations governing certification requirements when a competitive funding application submission deadline falls between October 1 and December 31.

If the certification will be made by a jurisdiction which has submitted its CHAS by the application submission deadline, but the CHAS has not yet been approved by HUD, the deadline will not be applied to the certification. Instead, the application must include a written statement from the public official responsible for submitting the CHAS that the jurisdiction has submitted a complete or an abbreviated CHAS for FY 1994 for HUD approval and that the application is consistent with the CHAS. If HUD approves the CHAS, the certification that the application is consistent with a HUD-approved CHAS for FY 1994 must be submitted before an application will be funded.

No CHAS consistency certification is required for a project located on a reservation of an Indian tribe. The CHAS regulations are published in 24 CFR part 91. Section 91.80 of the regulation sets forth the meaning of a certification of consistency with the CHAS, i.e., to what the jurisdiction is certifying.

4. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

5. SF-424. A certification on SF-424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

6. Anti-lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for grants

exceeding \$100,000. Disclosure of Lobbying Activities (Standard Form-LLL) if other than federally appropriated funds will be or have been used to lobby the Executive or Legislative branches of the Federal Government regarding specific contracts, grants, loans or cooperative agreements. The applicant determines if the submission of the SF-LLL is warranted.

7. Additional Certifications. (a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600-3619) and the implementing regulations at 24 CFR parts 100, 108, 109 and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative marketing regulations at 24 CFR part 200, subpart M, to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8.

(d) A certification by the Sponsor(s) that it will form an Owner (as defined in § 889.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under § 889.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project.

8. A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, and manage the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified



Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed \$10,000, if non-affiliated with National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed \$25,000, for all other Sponsors; see § 889.250).

9. A list of the applications, if any, the Sponsor has submitted or is planning to submit in response to this NOFA. A list of all FY 1993 and prior year capital advance projects to which the Sponsor(s) is a party, identified by project number and Field Office, which have not been finally closed.

10. HUD-2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

11. Evidence of permissive zoning. Evidence that ECHO housing is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the conditional commitment application (e.g., a summary of results of any recent requests for rezoning on land in similar zoning classifications and the time required for rezoning, preliminary indication of acceptability from the zoning body, a letter from the local community evidencing its support for the ECHO housing project, etc.).

12. Proposed program plan. Each of the following elements must be contained in a proposed program plan that describes how the Sponsor proposes to carry out the program and provides basic information about the characteristics and experience of the Sponsor and its ties to the local community. This plan must include separate sections on each of these elements:

(a) Sponsor's plan for soliciting host families. The plan should indicate the geographic area in which the Sponsor intends to solicit host families, and describe the method by which the Sponsor intends to obtain host families. The Owner must follow an affirmative marketing strategy to reach persons who are least likely to apply because of race, color, creed, religion, sex, handicap or national origin.

(b) Determination of need for ECHO housing and supportive services. A description of the category or categories of elderly persons the housing is intended to serve, evidence demonstrating sustained effective demand for ECHO housing based on

that population and their host families in the market area, and a description of the methods used by the sponsor to gather evidence demonstrating sustained effective demand for ECHO housing. (Such methods must include, but are not limited to, consideration of the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and FmHA) (e.g., public housing); state or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly populations and households; the number of income eligible elderly households by size, tenure and housing condition; the types of supportive services arrangements currently available in the area and the utilization of such services as evidenced by data from local social service agencies or agencies on aging. In describing the types of supportive service arrangements currently available in the area, a Sponsor may include supportive service arrangements which host families would be required to provide.)

(c) Sponsor characteristics. This must include a description of the Sponsor's purposes and activities, ties to the community and minority support and how long it has been in existence; any other rental housing projects and/or medical facilities sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families and minorities; the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families and minorities; and a statement describing the Sponsor's experience in contracting with minority and women-owned businesses, including amounts awarded.

#### IV. Corrections to Deficient Applications

##### A. Initial Screening

Applications for ECHO housing section 202 capital advances that are received by HUD Headquarters by 4 p.m. E.S.T. on October 26, 1993, will be reviewed to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. Deficiency letters will be sent informing Sponsors of any technical deficiencies in an application. Technical deficiencies are technical in nature and curable, such as failure to sign a certification or a

missing part of the application, and must not be of such a nature as to affect the technical quality of the application. Sponsors must correct such technical deficiencies within 14 calendar days from the date of the deficiency letter. In cases where this time is allowed to correct technical deficiencies in an application, the initial date and time of receipt will determine first-come, first-served eligibility.

##### B. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. All applications will be reviewed against the following threshold criteria: (1) Eligibility of Sponsor, (2) eligibility of the population to be served, (3) legal capacity of the Sponsor, and (4) submission of a Proposed Program Plan containing all required elements. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. An applicant will be afforded 14 calendar days from the date of HUD's written notice to appeal a technical rejection to HUD Headquarters. Headquarters must respond within 5 working days to the Sponsor. HUD Headquarters shall make a determination on an appeal prior to making its selection recommendations. All applications will be either ranked in chronological order or technically rejected at the end of technical processing.

Technical processing will also assure that if the Sponsor has been found by a court or by a Federal, State, or local agency, in noncompliance with any of the statutes, regulations, or other requirements listed in the civil rights certification (§ 889.270(b)(8)(i)), HUD will obtain from the Sponsor a statement of the actions taken to correct that noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice and no pending administrative actions for civil rights violations instituted by HUD, including a charge of discrimination under the Fair Housing Act. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Department's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and the Department's implementing regulations (24 CFR 8.57).



Upon completion of technical processing, all acceptable applications will be selected on a first-come, first-served basis in accordance with I.E. above.

#### V. Guidelines

Because the ECHO housing demonstration is a program under section 202 of the Housing Act of 1959, the ECHO housing demonstration shall be conducted in accordance with the section 202 handbooks, regulations, and policy guidance, except as modified in this Notice.

#### A. Definitions

For purposes of the ECHO housing demonstration program, the following definitions supplement the definitions provided in 24 CFR part 889—

*Host family* means the family that owns the single family home site where the ECHO unit will be located. The host family must be either a close family friend or a relative of the elderly person.

*Single family home* means an existing one- to four-family dwelling.

#### B. Location, Acquisition and Selection of Sites; Site Control

1. *Location and Acquisition.* ECHO units will be placed adjacent to the single family home of the host family. No two sites for ECHO units may be contiguous to each other. Land cost is not an eligible item for funding from the HUD capital advance. The host family must either convey the parcel to the Owner for nominal consideration or lease the parcel to the Owner (groundlease) for 40 years for nominal consideration (\$1 per year). The deed or leasehold instrument may contain reversionary language to the effect the parcel reverts back to the host family when the ECHO unit is removed, which must occur within one year after the elderly person ceases to reside in the unit.

2. *Site Control; Selection and Approval of Sites.* Site control is not required during the application stage. After the issuance of an ECHO housing fund reservation, the Owner will solicit and select elderly participants with a host family who will provide a parcel of land next to the host family's single family home. In soliciting elderly participants with a host family, the Owner must follow an affirmative marketing strategy to reach persons who are least likely to apply because of race, color, creed, religion, sex, handicap or national origin.

After selecting each site, the Owner must request approval of the site from the appropriate HUD Field Office. The HUD Field Office must approve each

initial site before the Owner purchases the ECHO unit to be placed on the site. As part of its request for approval of the site by the HUD Field Office, the Owner must submit: (i) A narrative giving a description of the site and area surrounding the site, as well as the characteristics of the neighborhood, and (ii) a map showing the intended geographical areas and racial composition, with any areas of racial concentration delineated.

As part its review of each site, HUD will conduct its environmental review in accordance with 24 CFR part 50. HUD will also review each site to ensure that the selection of the site complies with HUD's site and neighborhood standards set forth in 24 CFR 889.230.

#### C. Initial Closing and First Draw

Initial closing may occur after the Owner has obtained ground leases or conveyances from host families for 5 sites. After initial closing, the Owner will have an additional 12 months to locate the remaining host families, and obtain the remaining sites either by groundlease or conveyance. If the Owner does not obtain the remaining number of sites within 12 months of initial closing, the Owner will forfeit the right to develop the remaining sites.

The Owner may include in its first draw, a request for 10% of the cost of the number of ECHO units from which the Owner has obtained sites to make a down payment to the manufacturer of the ECHO units.

#### D. Provision of Services

An Owner of an ECHO housing project is not required to provide any of the services set forth in 24 CFR 889.260. Any costs associated with the provision of services will not be an eligible cost under the contract for project rental assistance. (In the standard section 202 project, the Project Rental Assistance Contract (PRAC) normally provides up to \$15 per month per unit. Because each ECHO housing project will contain between 10 and 20 units, and the units are located on scattered sites, from an economic viewpoint, an Owner will not be able to provide services in any meaningful way. Moreover, the host family is ideally located to assist the elderly person with the services listed in 24 CFR 889.260.)

#### E. Project Standards

1. *Construction Standards.* ECHO units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS), and the Department's implementing regulations (24 CFR part 40), the statewide industrialized building code (if one

exists) and any other relevant local building code. If a statewide industrialized building code or local building code does not exist, then the ECHO units must be constructed in accordance with the CABO One and Two Family Dwelling Code, Council of American Building Officials (CABO), distributed by Building Officials and Administrators International, Inc. (1983). (Copies of the CABO One and Two Family Dwelling Code are available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041 (703-931-4533)).

The installation of the ECHO unit on the homesite shall comply with the manufacturer's requirements for anchoring, support, stability and maintenance. The dealer or manufacturer shall inspect the ECHO unit, as installed on the homesite, for structural damage or other defects resulting from the transportation and installation of the ECHO unit. The dealer or manufacturer shall also test the performance of the ECHO unit's plumbing, mechanical and electrical systems to assure that they are fully operational.

ECHO units must be separately metered for utility services from the host family.

2. *Amenities.* Washers and dryers for each ECHO unit are eligible for funding from the HUD capital advance.

3. *Removal of ECHO units for subsequent reuse.* Each ECHO unit must be designed and constructed so that the ECHO unit can be disassembled and removed as easily as the ECHO unit is installed, without causing structural damage to the ECHO unit.

4. *Warranty for ECHO unit.* The home manufacturer shall furnish the Owner with a written warranty, duly executed by an authorized representative of the manufacturer on a HUD-approved form. The warranty shall be provided without cost to the Owner. The effective date of the warranty shall be the date of delivery of the ECHO unit to the Owner, regardless of when the warranty was executed by the manufacturer or was delivered to the Owner.

The warranty shall obligate the home manufacturer to take appropriate action to correct any nonconformity with the standards prescribed in paragraph III(e)(1) above, or any defects in materials or workmanship which become evident within one year after the date of delivery to the homesite. The warranty must also insure that the structural integrity of the ECHO unit shall be maintained so that it is liveable and durable after a subsequent move to a second homesite. This warranty shall



be in addition to, and not in derogation of, all other rights and privileges which the borrower may have under any other law or instrument during such period or thereafter. A copy of the warranty shall be collected at initial closing.

#### F. Moving Reserve Account

The Owner must establish and maintain a separate interest-bearing account entitled "moving reserve account" in a HUD-approved depository. The Owner must maintain separate records indicating the amount of funds deposited and withdrawn from the moving reserve account. Twenty percent (20%) of the capital advance amount shall be escrowed into the moving reserve account at final closing. The moving reserve account shall be maintained to pay for the removal, re-installation and accompanying rehabilitation of each ECHO unit. Funds may be drawn from the moving reserve account and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

#### G. Other Federal Requirements—Uniform Relocation Assistance and Real Property Acquisition Policies Act

Because of the inherent nature of the ECHO housing demonstration program (host family provides parcel of land) no individuals will be displaced under this demonstration program. Accordingly, the Department's relocation assistance requirements provided in 24 CFR 889.265(e) do not apply to the ECHO housing demonstration program.

#### H. Selection of Subsequent Elderly Person/Removal of ECHO Unit

After the elderly person no longer needs the ECHO unit, the host family may recommend another eligible family member or close family friend for the ECHO unit, or may require that the Owner remove the ECHO unit. If the host family requires removal of the ECHO unit, the Owner will have up to one year to remove the ECHO unit. However, the Owner will not remove the ECHO unit until 60 days after the ECHO unit is no longer needed, unless the host family requests earlier removal.

#### I. Offsite Storage

If an Owner receives a discount for buying multiple ECHO units, the Owner may store the ECHO units offsite; however, offsite storage of ECHO units shall be at the Owner's risk. In such a case, the Sponsor will have to purchase liability insurance for the ECHO units, or arrange for the seller of the ECHO units to maintain insurance on the ECHO units. Insurance for offsite storage will not be covered by the Capital

Advance. In the event the offsite ECHO units are destroyed or damaged, or the Owner is unable to locate a host family, the Department will not disburse funds for the offsite ECHO units.

#### J. Insurance

The manufacturer must insure the ECHO unit during transportation to the site. Each time the ECHO unit is moved, the Owner must obtain insurance to cover any damage done during the move, or hire a mover with adequate insurance to cover any damage done during the move.

#### VI. Other Matters

##### A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

##### B. Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under that Order. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for the ECHO housing demonstration program.

##### C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. Because this demonstration program only involves funding for 100 units of ECHO housing nationwide, the impact on families is not expected to be significant. However, to the extent there is an impact on families, the impact will be beneficial. Families will benefit because ECHO units allow elderly persons to remain independent while living near their relatives or close family friends. Accordingly, no further review is considered necessary.

##### D. Prohibition Against Advance Disclosure on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

##### E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the *Federal Register* on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways,



they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-3815; TDD: (202) 708-1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

#### F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the

Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

#### G. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of

Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

#### H. Catalog of Federal Domestic Assistance of Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: 12 U.S.C. 1701q and 1701q note; 42 U.S.C. 3535(d).

Dated: August 6, 1993.

Nicolas P. Retsinas,  
Assistant Secretary for Housing—Federal  
Housing Commissioner.

[FR Doc. 93-20882 Filed 8-26-93; 8:45 am]

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# Federal Register

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Friday  
August 27, 1993

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## Part IV

### Department of the Interior

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Fish and Wildlife Service

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50 CFR Part 20

Migratory Bird Hunting; Early Seasons  
and Bag and Possession Limits for  
Certain Migratory Game Birds in the  
Contiguous United States et al.; Final  
Rule



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

RIN 1018-AA24

**Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1993-94 season.

EFFECTIVE DATE: August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358-1714.

**SUPPLEMENTARY INFORMATION:****Regulations Schedule for 1993**

On April 9, 1993, the Service published for public comment in the *Federal Register* (58 FR 19008) a proposal to amend 50 CFR part 20, with comment periods ending July 22, 1993, for early-season proposals and September 1, 1993, for late-season proposals. On June 1, 1993, the Service published for public comment a second document (58 FR 31244) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 24, 1993, a public hearing was held in Washington, DC, as announced in the April 9 and June 1 *Federal Registers* to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 13, 1993, the Service published in the *Federal Register* (58 FR 37828) a third document in the series of proposed, supplemental, and final

rulemaking documents which dealt specifically with proposed early-season frameworks for the 1993-94 season. On August 5, 1993, a public hearing was held in Washington, DC, as announced in the April 9, June 1, and July 13 *Federal Registers*, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 23, 1993, the Service published a fourth document (58 FR 44576) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. The fifth document in the series, published August 23, 1993 (58 FR 44590), dealt specifically with proposed frameworks for the 1993-94 late-season migratory bird hunting regulations. The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR 20 to set hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

**NEPA Consideration**

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the *Federal Register* on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

**Endangered Species Act Consideration**

In August 1993, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and

conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

**Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act**

In the April 9 *Federal Register*, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634-ARLSQ, 1849 C Street, NW., Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

**Memorandum of Law**

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the *Federal Register* dated August 23, 1993 (58 FR 44576).

**Authorship**

The primary authors of this rule are William O. Vogel, David F. Caithamer, and Patricia Hairston, Office of Migratory Bird Management.

**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature,



operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States and Territories would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the

terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 18, 1993.

**Don Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

#### **PART 20—[AMENDED]**

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K, is amended as follows.

1. The authority citation for part 20 continues to read as follows:

**Authority:** 16 U.S.C. 703-711, 712, and 742 a-d and e-j.

**BILLING CODE 4310-55-F**



(b) Virgin Islands

	Season Dates	Bag	Limits Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	Jan. 1-Jan. 31	3	6

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

**§20.102 Seasons, limits, and shooting hours for Alaska.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

**CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.**

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

**§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

**CHECK COMMONWEALTH REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.**

(a) Puerto Rico

	Season Dates	Bag	Limits Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 4-Nov. 1	10	10
Scaly-naped pigeons	Sept. 4-Nov. 1	5	5
Ducks	Nov. 13-Dec. 20 & Jan. 8-Jan. 24	3	6
Common Moorhens	Nov. 13-Dec. 20 & Jan. 8-Jan. 24	6	12
Common Snipe	Nov. 13-Dec. 20 & Jan. 8-Jan. 24	6	12

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot.

Closed Areas: Closed areas are described in the August 23, 1993, Federal Register (58 FR 44576).



4. Section 20.103 is revised to read as follows:

**§20.103 Seasons, limits, and shooting hours for doves and pigeons.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

**CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.**

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits	
		Bag	Possession
<b>EASTERN MANAGEMENT UNIT</b>			
<u>Alabama</u>			
North Zone	Sept. 18-Oct. 31 & Dec. 26-Jan. 10	15 15	15 15
South Zone	Oct. 9-Nov. 26 & Dec. 26-Jan. 15	12 12	12 12
<u>Delaware</u>			
12 noon to sunset 1/2 hour before sunrise to sunset	Sept. 4-Sept. 25 Oct. 18-Oct. 30 & Dec. 9-Jan. 12	12 12 12	24 24 24
<u>Florida (1)</u>			
Northwest Zone	Sept. 18-Oct. 10 & 12 noon to sunset 1/2 hour before sunrise to sunset	12 12 12	24 24 24
South Zone	Oct. 2-Oct. 24 12 noon to sunset 1/2 hour before sunrise to sunset	12 12	24 24

**Daily Bag and Possession Limits**

Area	Ducks(1)	Geese(2)	Brant	Common Snipe	Sandhill Cranes(3)
North Zone	8-24	6-12	2-4	8-16	3-6
Gulf Coast Zone	6-18	6-12	2-4	8-16	2-4
Southeast Zone	5-15	6-12	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	5-15	6-12	2-4	8-16	2-4
Kodiak Zone	5-15	6-12	2-4	8-16	2-4

(1) In State Game Management Units (Units 1-26 (Statewide), the basic bag limits may include not more than 2 pintails daily, 6 in possession, and 2 canvasbacks daily, 6 in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, king and common eider, oldsquaw, harlequin ducks, and common and red-breasted mergansers. The season is closed for Steller's and spectacled eiders. In Units 6(D) and 7, the season for harlequin ducks will not open until October 1.

(2) No more than 4 daily, 8 in possession, may be any combination of Canada and/or white-fronted geese, provided that in Units 1-9 and 14-18, no more than 2 daily, 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island), the taking of Canada geese is prohibited. The taking of Canada geese also is prohibited in that portion of Unit 18 west of a line from the mouth of the Pastolik River to Kusilvak Mountain, then to the mouth of the Kialik River, then to the Unit 18 boundary near the north outlet of Nagupun Lake. In Unit 1(C), the taking of snow geese is prohibited. In Units 1-26 (Statewide), the taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

(3) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

**Falconry:** The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

**Special Tundra Swan Season:** In Unit 22, there will be a tundra swan season from September 1 through October 30 with a season limit of 1 tundra swan per hunter. This season is by registration permit only. Up to 300 permits may be issued. In Unit 18, there will be a tundra swan season from September 1 through October 31 with a limit of 1 tundra swan per permit. More than 1 permit per season may be issued to a hunter, with issuance one at a time upon filing a harvest report. Up to 500 permits may be issued.



		Season Dates	Bag	Limits Possession
<u>Georgia</u> Zone 1	12 noon to sunset	Sept. 4	12	24
	1/2 hour before sunrise to sunset	Sept. 5-Oct. 18 & Nov. 25-Nov. 27 & Dec. 25-Jan. 15	12	24
			12	24
<u>Zone 2</u>	12 noon to sunset	Sept. 25	12	24
	1/2 hour before sunrise to sunset	Sept. 26-Oct. 24 & Nov. 25-Nov. 27 & Dec. 10-Jan. 15	12	24
<u>Illinois</u>	sunrise to sunset	Sept. 1-Oct. 30	15	30
<u>Indiana</u>	1/2 hour before sunrise to sunset	Sept. 1-Oct. 16 & Nov. 5-Nov. 14 & Nov. 25-Nov. 28	15	30
			15	30
			15	30
<u>Kentucky</u>	11 a.m. to sunset	Sept. 1-Sept. 30 & Oct. 9-Nov. 1	15	30
	sunrise to sunset	Dec. 4-Dec. 9	15	30
<u>Louisiana</u>	12 noon to sunset	Sept. 4-Sept. 5 & Oct. 16-Oct. 17 & Dec. 11-Dec. 12	12	24
			12	24
			12	24
	1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 & Oct. 18-Nov. 14 & Dec. 13-Jan. 10	12	24
<u>Maryland</u>	12 noon to sunset	Sept. 1-Oct. 23	12	24
	1/2 hour before sunrise to sunset	Nov. 16-Nov. 26 & Dec. 20-Dec. 25	12	24
			12	24
<u>Mississippi</u>	12 noon to sunset	Sept. 4-Sept. 26 & Oct. 16-Nov. 7 & Dec. 27-Jan. 9	15	30
			15	30
			15	30
<u>North Carolina</u>	12 noon to sunset	Sept. 4-Oct. 2	12	24
	1/2 hour before sunrise to sunset	Nov. 22-Nov. 27 & Dec. 13-Jan. 15	12	24
			12	24
<u>Pennsylvania</u>	12 noon to sunset	Sept. 1-Oct. 9	12	24
	1/2 hour before sunrise to sunset	Oct. 30-Nov. 27	12	24
<u>Rhode Island</u>	12 noon to sunset	Sept. 20-Oct. 3	12	24
	1/2 hour before sunrise to sunset	Oct. 16-Nov. 21 & Dec. 26-Jan. 13	12	24
<u>South Carolina</u>	12 noon to sunset	Sept. 4-Sept. 6 & Sept. 7-Oct. 9 & Nov. 20-Nov. 27 & Dec. 21-Jan. 15	12	24
			12	24
			12	24
<u>Tennessee</u>	12 noon to sunset	Sept. 1	15	30
	1/2 hour before sunrise to sunset	Sept. 2-Sept. 27 & Oct. 9-Oct. 23 & Dec. 23-Jan. 9	15	30
<u>Virginia</u>	12 noon to sunset	Sept. 4-Sept. 30	12	24
	1/2 hour before sunrise to sunset	Oct. 1-Oct. 30 & Dec. 27-Jan. 8	12	24
			12	24
<u>West Virginia</u>	12 noon to sunset	Sept. 1	12	24
	1/2 hour before sunrise to sunset	Sept. 2-Oct. 9 & Oct. 25-Nov. 6 & Dec. 22-Jan. 8	12	24
			12	24



		Season Dates	Bag	Limits Possession
<b>WESTERN MANAGEMENT UNIT</b>				
Arizona (5)		Sept. 1-Sept. 12 & Nov. 23-Jan. 9	10	20
California (6)		Sept. 1-Sept. 15 & Nov. 13-Dec. 27	10	20
Idaho		Sept. 1-Sept. 30	10	20
Nevada (6)		Sept. 1-Sept. 30	10	20
Oregon		Sept. 1-Sept. 30	10	20
Utah		Sept. 1-Sept. 30	10	20
Washington		Sept. 1-Sept. 15	10	20
<b>OTHER POPULATIONS</b>				
Hawaii (7)		Nov. 6-Jan. 2 & Jan. 8-Jan. 16	10	10

- (1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.
- (2) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate.
- (3) In South Dakota, shooting hours are from sunrise to sunset.
- (4) In Texas, the daily bag limit is 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 6 may be white-winged doves and 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties, where the daily bag limit may include no more than 2 white-winged doves. Possession limits are twice the daily bag limit.  
During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.
- (5) In Arizona, during September 1 through 10, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 22 through January 10, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

		Season Dates	Bag	Limits Possession
<b>CENTRAL MANAGEMENT UNIT</b>				
Arkansas		Sept. 4-Sept. 26 & Oct. 2-Oct. 17 & Dec. 11-Dec. 31	15	30
Colorado		Sept. 1-Oct. 30	15	30
Kansas		Sept. 1-Oct. 30	15	30
Missouri		Sept. 1-Oct. 30	15	30
Montana		Sept. 1-Oct. 30	15	30
Nebraska		Sept. 1-Oct. 30	15	30
New Mexico (2)		Sept. 1-Sept. 30 & Dec. 1-Dec. 30	15	30
North Dakota		Sept. 1-Oct. 30	15	30
Oklahoma		Sept. 1-Oct. 30	15	30
South Dakota (3)		Sept. 1-Oct. 15	15	30
Texas (4)				
North Zone		Sept. 1-Nov. 9	12	24
Central Zone		Sept. 1-Oct. 31 & Dec. 26-Jan. 3	12	24
South Zone Special Area (special season)		Sept. 24-Nov. 10 & Dec. 26-Jan. 12	12	24
South Zone (special season)		Sept. 4-Sept. 5 & Sept. 11-Sept. 12	10	20
Remainder of the South Zone		Sept. 24-Nov. 14 & Dec. 26-Jan. 12	12	24
Wyoming		Sept. 1-Oct. 15	15	30



Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
<b>ATLANTIC FLYWAY</b>				
Connecticut (4)	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
Florida	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Dec. 11-Jan. 24	Nov. 1-Feb. 15
Georgia	Sept. 15-Nov. 23	Sept. 15-Nov. 23	Dec. 11-Jan. 24	Nov. 16-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 19-Nov. 26 & Dec. 13-Dec. 18	Sept. 20-Nov. 26 & Dec. 13-Jan. 20
Massachusetts	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
New Hampshire	Closed	Closed	Oct. 1-Nov. 14	Sept. 15-Nov. 30
New Jersey (5)	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 19	Oct. 1-Jan. 15
North Zone	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 13-Dec. 4 & Dec. 13-Dec. 25	Oct. 1-Jan. 15
South Zone	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
North Carolina	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Dec. 9-Jan. 22	Nov. 15-Feb. 28
Pennsylvania	Sept. 1-Nov. 6	Closed	Oct. 23-Nov. 6	Oct. 23-Nov. 27
Rhode Island	Sept. 13-Nov. 21	Sept. 13-Nov. 21	Oct. 16-Nov. 26	Sept. 13-Nov. 26 & Dec. 11-Jan. 11
South Carolina	Sept. 13-Oct. 19 & Nov. 13-Dec. 15	Sept. 13-Oct. 19 & Nov. 13-Dec. 15	Nov. 24-Dec. 11 & Dec. 25-Jan. 20	Nov. 12-Feb. 26
Vermont	Closed	Closed	Oct. 1-Nov. 14	Sept. 25-Dec. 3
Virginia	Sept. 11-Nov. 19	Sept. 11-Nov. 19	Oct. 25-Nov. 20 & Dec. 22-Jan. 8	Oct. 18-Jan. 31

(6) In the white-winged dove open areas of California and Nevada, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning and laced doves in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is only permitted on weekends and holidays.

(b) Band-tailed Pigeons

Seasons in:	Season Dates	Bag	Limits Possession
Arizona (1)	Oct. 13-Oct. 22	5	10
California North Zone	Sept. 18-Sept. 26	2	2
South Zone	Dec. 18-Dec. 26	2	2
Colorado (1)	Sept. 1-Sept. 30	5	10
New Mexico (1) North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon (1)	Sept. 15-Sept. 23	2	2
Utah (1)	Sept. 1-Sept. 30	5	10

(1) Each band-tailed pigeon hunter must have a State permit or special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

**\$20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.



	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
West Virginia	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 1-Dec. 16
<b>MISSISSIPPI FLYWAY</b>				
Alabama (7)	Sept. 11-Sept. 19 & Nov. 21-Jan. 20	Sept. 11-Sept. 19 & Nov. 21-Jan. 20	Nov. 27-Jan. 30	Nov. 13-Feb. 27
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 6-Dec. 13 & Jan. 1-Jan. 27	Nov. 13-Feb. 27
Illinois	Sept. 4-Nov. 12	Closed	Oct. 1-Dec. 4	Sept. 4-Dec. 19
Indiana	Sept. 1-Nov. 9	Closed	Sept. 25-Nov. 28	Sept. 1-Dec. 16
Iowa (8)	Sept. 4-Nov. 12	Closed	Sept. 18-Nov. 21	Sept. 4-Dec. 19
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 16-Dec. 19	Sept. 15-Oct. 29 & Nov. 25-Jan. 25
Louisiana	Sept. 18-Sept. 26 & Nov. 13-Jan. 12	Sept. 18-Sept. 26 & Nov. 13-Jan. 12	Nov. 27-Jan. 30	Nov. 6-Feb. 20
Michigan (9)	Sept. 15-Nov. 14	Closed	Sept. 15-Nov. 14	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 1-Nov. 4	Sept. 1-Nov. 4
Mississippi	Oct. 16-Dec. 24	Oct. 16-Dec. 24	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Dec. 18	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Sept. 24-Nov. 27	Sept. 1-Nov. 27 & Dec. 6-Dec. 24
Tennessee	Deferred	Closed	Oct. 9-Dec. 12	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 18-Nov. 21	Deferred
<b>CENTRAL FLYWAY</b>				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 9-Dec. 12	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (10)	Sept. 1-Nov. 9	Closed	Sept. 15-Nov. 18	Sept. 1-Dec. 16

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
New Mexico	Deferred	Deferred	Deferred	Deferred
North Dakota	Closed	Closed	Closed	Oct. 2-Nov. 28
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Jan. 4	Oct. 1-Jan. 15
South Dakota (11)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Deferred	Deferred
Wyoming	Sept. 11-Nov. 19	Closed	Closed	Sept. 11-Dec. 14
<b>PACIFIC FLYWAY</b>				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho (12)	Closed	Closed	Closed	Sept. 18-Jan. 2
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
Wyoming	Sept. 11-Nov. 19	Closed	Closed	Sept. 11-Dec. 14

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

- (1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
- (2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, the limits for clapper and king rails are 10 daily and 20 in possession.
- (3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.
- (4) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail.
- (5) In New Jersey, the season for king rails is closed by State regulation.
- (6) In New York, seasons for sora and Virginia rails and common snipe are closed on Long Island.
- (7) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.
- (8) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.



- (8) In Michigan, the season opens concurrently with the duck season in certain areas.
- (10) In Nebraska, the rail limits are 10 daily and 20 in possession.
- (11) In South Dakota, the snipe limits are 5 daily and 15 in possession.
- (12) In Idaho, in Zone 5, the snipe season in October 23 through December 20.

6. Section 20.105 is amended by revising paragraphs (a) through (d) to read as follows:  
 \$20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Bag	Limits Possession
<u>ATLANTIC FLYWAY</u>			
<u>Delaware</u>	Sept. 1-Nov. 9	15	30
<u>Florida</u> (1)	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	15	30
<u>Georgia</u>	Deferred	..	..
<u>Maine</u>	Sept. 1-Nov. 9	15	30
<u>New Jersey</u>	Sept. 1-Nov. 9	15	30
<u>New York</u>			
Long Island			
Remainder of State	Closed	..	..
<u>North Carolina</u>	Sept. 1-Nov. 9	15	30
<u>Pennsylvania</u>	Sept. 4-Nov. 12	15	30
<u>Rhode Island</u>	Sept. 1-Nov. 6	15	30
	Sept. 13-Nov. 21	15	30

	Season Dates	Bag	Limits Possession
<u>South Carolina</u>	Sept. 13-Oct. 19 & Nov. 13-Dec. 15	15	30
<u>Virginia</u>	Deferred	..	..
<u>West Virginia</u>	Deferred	..	..
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Sept. 11-Sept. 19 & Nov. 21-Jan. 20	15	15
<u>Arkansas</u>	Sept. 1-Nov. 9	15	30
<u>Indiana</u>	Sept. 1-Nov. 9	15	30
<u>Kentucky</u>	Sept. 1-Nov. 9	15	30
<u>Louisiana</u>	Sept. 18-Sept. 26 & Nov. 13-Jan. 12	15	30
<u>Michigan</u>	Deferred	..	..
<u>Minnesota</u>	Deferred	..	..
<u>Mississippi</u>	Oct. 16-Dec. 24	15	30
<u>Ohio</u>	Sept. 1-Nov. 9	15	30
<u>Tennessee</u>	Deferred	..	..
<u>Wisconsin</u>	Deferred	..	..
<u>CENTRAL FLYWAY</u>			
<u>Colorado</u>	Deferred	..	..
<u>New Mexico</u>	Deferred	..	..
<u>Oklahoma</u>	Sept. 1-Nov. 9	15	30
<u>Texas</u>	Sept. 1-Nov. 9	15	30
<u>Wyoming</u>	Deferred	..	..



PACIFIC FLYWAY

All States

Deferred

(1) The season applies to common moorhens only.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Bag	Limits Possession
Connecticut	Deferred	--	--
Delaware	Sept. 25-Jan. 8	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 1-Jan. 15	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 8-Jan. 15	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Bag	Limits Possession
<u>ATLANTIC FLYWAY</u>			
Florida (1)	Sept. 25-Sept. 29	4	8
<u>MISSISSIPPI FLYWAY</u>			
Alabama	Sept. 11-Sept. 19	4	8
Arkansas (2)	Sept. 11-Sept. 19	4	8
Illinois (2)	Sept. 4-Sept. 12	4	8
Indiana (2)	Sept. 1-Sept. 9	4	8
Kentucky (3)	Sept. 15-Sept. 19	4	8
Louisiana	Sept. 18-Sept. 26	4	8
Mississippi	Sept. 18-Sept. 26	4	8
Missouri (2)	Sept. 11-Sept. 19	4	8
Ohio (2)	Sept. 11-Sept. 19	4	8
Tennessee (3)	Sept. 11-Sept. 15	4	8
<u>CENTRAL FLYWAY</u>			
Colorado	Sept. 4-Sept. 12	4	8
Kansas	Sept. 11-Sept. 19	4	8
New Mexico (2)	Sept. 11-Sept. 19	4	8
Oklahoma	Sept. 11-Sept. 19	4	8
Texas	Sept. 11-Sept. 19	4	8

(1) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate. The possession limit is twice the daily bag limit.



(2) Shooting hours are from sunrise to sunset.

(3) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Early (September) Canada Goose Seasons.

	Season Dates	Bag	Limits Possession
<u>ATLANTIC FLYWAY</u>			
<u>Maryland</u>	Sept. 7-Sept. 15	3	6
<u>Massachusetts (1)</u>	Sept. 7-Sept. 15	5	10
<u>New Jersey</u>	Sept. 8-Sept. 15	5	10
<u>New York</u>			
<u>Northern</u>	Sept. 7-Sept. 15	3	6
<u>Western</u>	Sept. 7-Sept. 15	3	6
<u>Southeastern</u>	Sept. 7-Sept. 15	3	6
<u>North Carolina (1)</u>	Sept. 16-Sept. 30	3	6
<u>Pennsylvania</u>			
<u>Northwestern Counties</u>	Sept. 1-Sept. 10	3	6
<u>Southeastern Counties</u>	Sept. 1-Sept. 15	5	10
<u>Virginia</u>	Sept. 7-Sept. 15	3	6
<u>MISSISSIPPI FLYWAY</u>			
<u>Indiana (1)</u>	Sept. 1-Sept. 10	5	10
<u>Michigan</u>	Sept. 1-Sept. 10	5	10
<u>Minnesota (2)</u>	Sept. 4-Sept. 13	4	8
<u>Ohio</u>	Sept. 1-Sept. 10	3	6
<u>Wisconsin (3)</u>	Sept. 1-Sept. 10	5	10

	Season Dates	Bag	Limits Possession
<u>PACIFIC FLYWAY</u>			
<u>Oregon</u>			
<u>Lower Columbia River Zone</u>	Sept. 1-Sept. 12	2	4
<u>Northwestern Zone (1)</u>	Sept. 1-Sept. 12	2	4
<u>Washington</u>	Sept. 1-Sept. 12	2	4
<u>Wyoming (1)</u>	Sept. 4-Sept. 6	2	2 per season

(1) State permit required.

(2) In Minnesota, the bag and possession limits for Canada geese will be 2 and 4, respectively, in the Fergus Falls/Alexandria Zone and Southwest Zone.

(3) In Wisconsin, the season is closed from September 4 through September 6.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 23, 1993 Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.



CENTRAL FLYWAY		PACIFIC FLYWAY	
State	Season Dates	Season Dates	State
Colorado (1)	Oct. 2-Nov. 28	Arizona (2)	Nov. 5-Nov. 7 & Nov. 9-Nov. 11 & Nov. 13-Nov. 15 & Nov. 17-Nov. 19
Kansas	Deferred	Utah (2)(4)(5)	Sept. 4-Sept. 5 Sept. 11-Sept. 12
Montana	Sept. 25-Nov. 21	Wyoming	Sept. 4-Sept. 6 Sept. 4-Sept. 6 Sept. 4-Sept. 6
Regular season (1)		Bear River Area (2)	2 per season
Special season (2)	Sept. 11-Sept. 12 & Sept. 18-Sept. 19	Salt River Area (2)	2 per season
		Eden-Farson Area (2)	2 per season
New Mexico	Oct. 16-Jan. 16		1 per season
Regular season (1)(3)			1 per season
Middle Rio Grande Valley Area (2)(3)(4)			
	Oct. 30-Oct. 31 & Dec. 4-Dec. 5 & Dec. 18-Dec. 19 & Jan. 12-Jan. 13 & Jan. 15-Jan. 16 & Jan. 25-Jan. 26		
Southwest Area (2)(3)(4)	Jan. 8-Jan. 9		
North Dakota (1)	Sept. 11-Nov. 7		
Oklahoma (1)	Deferred		
South Dakota (1)	Sept. 25-Oct. 31		
Texas (1)	Deferred		
Wyoming	Sept. 15-Nov. 11		
Regular Season (1)			
Riverton-Boysen Unit (2)	Sept. 25-Sept. 30		

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) Hunting in the special seasons is by State permit only.

(3) The seasonal bag limit is 6.

(4) Shooting hours are sunrise to sunset.

(5) In Utah, the season is open in Rich County only.

8. Section 20.109 is revised to read as follows:  
**\$20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.**  
 Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:  
 Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.



Extended Falconry Dates

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.  
 Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

Extended Falconry Dates

ATLANTIC FLYWAY

Florida

Mourning and white-winged doves  
Northwest Zone

South Zone

Rails and common moorhens

Woodcock

Maryland

Mourning doves

Rails

Woodcock

Oct. 18-Nov. 19 &  
Dec. 6-Dec. 10

Oct. 25-Nov. 19 &  
Dec. 6-Dec. 10 &  
Jan. 10-Jan. 16

Oct. 18-Nov. 23

Nov. 24-Dec. 10 &  
Jan. 25-Mar. 10

Oct. 24-Nov. 15 &  
Dec. 12-Dec. 19 &  
Dec. 26-Dec. 31

Nov. 10-Dec. 16

Oct. 5-Oct. 18 &  
Nov. 27-Dec. 12 &  
Dec. 19-Jan. 19

Pennsylvania

Mourning doves

Virginia

Doves

Rails

Woodcock

Oct. 10-Oct. 29 &  
Nov. 28-Dec. 15

Dec. 13-Dec. 26 &  
Jan. 9-Jan. 31

Dec. 13-Jan. 18

Dec. 13-Dec. 21 &  
Jan. 9-Mar. 2

MISSISSIPPI FLYWAY

Illinois

Mourning doves

Rails

Woodcock

Oct. 31-Dec. 16

Nov. 13-Dec. 19

Sept. 1-Sept. 30 &  
Dec. 5-Dec. 16

Indiana

Mourning doves

Woodcock

Oct. 17-Nov. 4 &  
Jan. 1-Jan. 28

Sept. 1-Sept. 24 &  
Nov. 29-Dec. 16

Ducks, mergansers, and coots (1)

North Zone

Iowa

Ducks and mergansers (1)

North Zone

South Zone

Geese (1)

Sept. 1-Sept. 30

Sept. 1-Sept. 30

Sept. 1-Sept. 30

Sept. 25-Sept. 30



	Extended Falconry Dates	Extended Falconry Dates
<u>Michigan</u>		
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22	
Ducks, mergansers, coots, and moorhens (1) North Zone	Sept. 7-Sept. 30	
Middle Zone	Sept. 7-Sept. 30	
South Zone	Sept. 7-Sept. 30	
<u>Minnesota</u>		
Rails, snipe, and woodcock	Nov. 5-Dec. 16	
Ducks, mergansers, coots, and moorhens (1)	Sept. 1-Sept. 30	
<u>Missouri</u>		
Mourning doves	Oct. 31-Dec. 16	
Ducks, merganser, and coots	Sept. 11-Sept. 19	
<u>Wisconsin</u>		
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 30	
Woodcock	Sept. 1-Sept. 17	
Ducks, mergansers, and coots (1) North Zone	Sept. 1-Sept. 30	
South Zone	Sept. 15-Sept. 30	
<u>CENTRAL FLYWAY</u>		
<u>Colorado</u>		
Ducks, mergansers and coots (1)	Sept. 1-Sept. 3 & Sept. 13-Sept. 30	
<u>Montana (2)</u>		
Ducks, mergansers, and coots (1)	Sept. 11-Sept. 30	
<u>New Mexico</u>		
Doves		Oct. 1-Nov. 4 & Nov. 29-Nov. 30 & Dec. 31-Jan. 9
Band-tailed pigeons North Zone		Sept. 21-Dec. 16
South Zone		Oct. 21-Jan. 15
Sandhill cranes Regular Season Area		Jan. 17-Jan. 30
<u>North Dakota</u>		
Ducks, mergansers, coots, and snipe (1)		Sept. 1-Oct. 1
<u>Oklahoma</u>		
Ducks, mergansers, and coots (1) High Plains		Sept. 20-Sept. 30
<u>South Dakota</u>		
Ducks, mergansers, and coots (1)		Sept. 4-Sept. 30
<u>Texas</u>		
Mourning and white-winged doves		Nov. 15-Dec. 21
Rails and gallinules		Nov. 15-Dec. 21
<u>Wyoming</u>		
Rails		Sept. 1-Sept. 14
Ducks, mergansers, and coots (1)		Sept. 1-Sept. 30



Extended Falconry Dates

PACIFIC FLYWAY

Arizona

Doves

Sept. 13-Oct. 29

Ducks and mergansers (1)  
North Zone

Sept. 1-Sept. 30

Colorado

Ducks, mergansers, and coots (1)

Sept. 18-Sept. 30

Idaho

Mourning Doves

Oct. 1-Nov. 30 &  
Feb. 23-Mar. 10

Ducks, mergansers, and coots (1)

Sept. 1-Sept. 30

Geese

Zones 2 and 3

Sept. 1-Sept. 14

Zones 1, 4, and 5

Sept. 1-Sept. 7

New Mexico

Doves

Oct. 1-Nov. 4 &  
Nov. 29-Nov. 30 &  
Dec. 31-Jan. 9

Band-tailed pigeons  
North Zone

Sept. 21-Dec. 16

South Zone

Oct. 21-Jan. 15

Oregon (3)

Mourning doves

Oct. 1-Dec. 16

Band-tailed pigeons

Sept. 1-Sept. 14 &  
Sept. 24-Dec. 16

Extended Falconry Dates

Utah

Mourning doves and band-tailed pigeons

Oct. 1-Dec. 16

Washington

Mourning doves

Sept. 1-Oct. 15 &  
Dec. 1-Dec. 31

Wyoming

Rails and snipe

Sept. 1-Sept. 10

Ducks, mergansers, and coots (1)

Sept. 1-Sept. 30

(1) Additional days occurring after Sept. 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

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# federal register

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Friday  
August 27, 1993

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**Part V**

**Department of State**

**Bureau of Politico-Military Affairs**

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**Imposition of Missile Proliferation  
Sanctions Against Entities in China and  
Pakistan; Notice**



## DEPARTMENT OF STATE

## Bureau of Politico-Military Affairs

[Public Notice 1857]

## Imposition of Missile Proliferation Sanctions Against Entities in China and Pakistan

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** The Under Secretary of State for International Security Affairs has determined that entities in China and Pakistan have engaged in missile technology proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979, as amended by the National Defense Authorization Act for Fiscal Year 1991, and the National Defense Authorization Act for Fiscal Years 1992 and 1993.

EFFECTIVE DATE: August 24, 1993.

## FOR FURTHER INFORMATION CONTACT:

*On General issues:* Vann H. Van Diepen, Office of Weapons Proliferation Policy, Bureau of Politico-Military Affairs, Department of State (202-647-4930).

*On Munitions licensing issues:* Rose Biancianiello, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (202-875-7050).

*On Commerce licensing issues:*

Raymond Jones, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce (202-482-4244).

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)), Sections 1702 and 1703 of the National Defense Authorization Act for Fiscal Year 1990-91 (Pub. L. 101-510), and Executive Order 12851 of June 11, 1993, the Under Secretary of State for International Security Affairs determined on August 24, 1993, that the following foreign

persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)) on these entities and their subsidiaries:

1. Ministry of Aerospace Industry, to include China Precision Machinery Import-Export Corporation (CPMIEC) (China)
2. Ministry of Defense (Pakistan)

Accordingly, the following sanctions are being imposed on these entities and their subsidiaries:

(A) licenses for export to the sanctioned entities of Missile Technology Control Regime (MTCR) equipment or technology controlled pursuant to the Export Administration Act of 1979 or the Arms Export Control Act will be denied for two years; and

(B) no U.S. government contracts relating to MTCR equipment or technology and involving the sanctioned entities will be entered into for two years.

These sanctions apply not only to the entities described above, but also to their divisions, subunits, and any successor entities. Such additional entities include, but are not limited to, the following:

1. China National Space Administration (China)
2. China Aerospace Corporation (China)
3. Aviation Industries of China (China)
4. China Precision Machinery Import-Export Corporation (CPMIEC) (China)
5. China Great Wall Industrial Corporation or Group (China)
6. Chinese Academy of Space Technology (China)
7. Beijing Wan Yuan Industry Corporation (a/k/a Wanyuan Company or China Academy of Launch Vehicle Technology)

(China)

8. China Haiying Company (China)
9. Shanghai Astronautics Industry Bureau
10. China Chang Feng Group (a/k/a China Changfeng Company) (China)

Additionally, because of China's status as a country with a non-market economy that was not a member of the Warsaw Pact, the following sanctions must be applied to all activities of the Chinese government relating to missile development or production, as well as all activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft.

(A) licenses for export to the government activities described above of MTCR equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(B) no U.S. government contracts relating to MTCR equipment or technology and involving the government activities described above will be entered into for two years.

With respect to all of the entities and activities described above, the export sanction does not apply to existing licenses and will not require the revocation of such licenses.

Further, with respect to items controlled pursuant to the Export Administration Act, the export sanction does not apply to exports made pursuant to certain General licenses.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993. The Department of Commerce will shortly issue regulations relating to the implementation of these sanctions with respect to exports controlled by the Export Administration Act.

Dated: August 25, 1993.

Robert Einhorn,

Acting Assistant Secretary of State for Politico-Military Affairs.

[FR Doc. 93-21069 Filed 8-26-93; 8:45 am]

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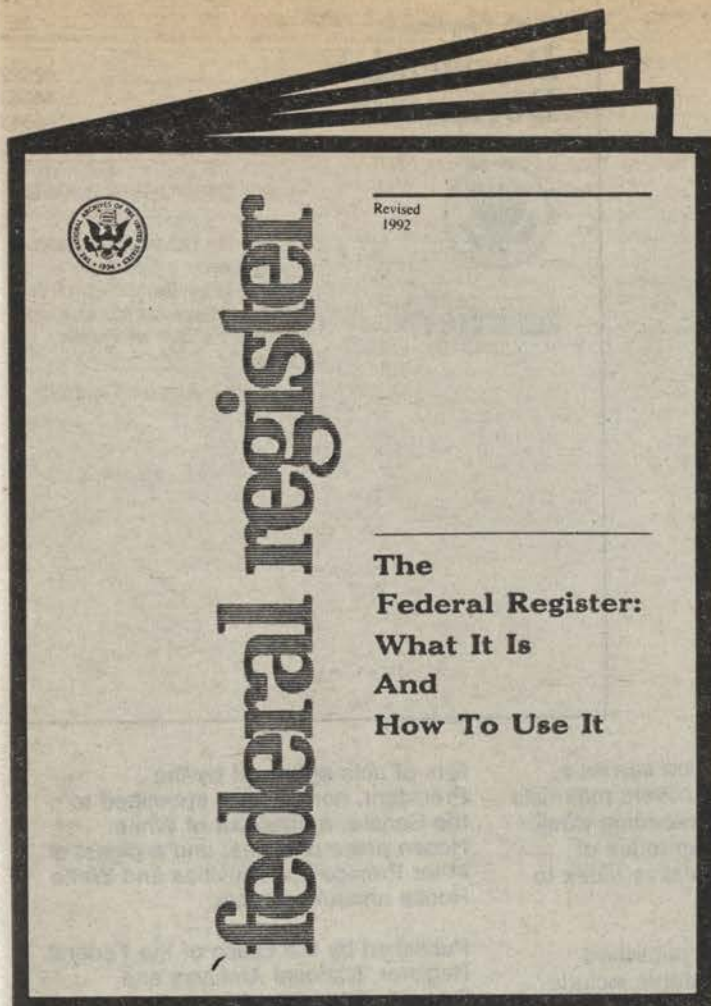
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