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# federal register

Wednesday
February 8, 1995

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 29

**[Docket No. TB–93–22]**

### Standards; Amendment of Definition

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

**ACTION:** Final rule.

**SUMMARY:** The Department is amending the definition of ''Rework'' pertaining to the inspection of burley tobacco by adding language requiring that the average bale weight in a lot of untied baled burley not exceed 100 pounds.

**EFFECTIVE DATE:** July 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Duncan, III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 205–0567.

**SUPPLEMENTARY INFORMATION:** Notice was given in the **Federal Register** on November 29, 1994, that the Department was proposing to revise the definition ''Rework'' in Subpart C, Section 29.3053(b) to require that the bales in each lot not exceed an average weight of 100 pounds. This proposal was based on a recommendation by the Burley Tobacco Advisory Committee, representing producers, warehouses, and buyers, that an average bale weight of 100 pounds would improve 2 handling, reduce spoilage associated with heavy bales, and therefore, improve the image of American burley.

Interested parties were given an opportunity to comment on the proposed rule. A total of three comments were received, all of which favored the proposed rule.

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

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

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of ''small business'' which are defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last 3 years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this final rule would not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace.

The information collection has been submitted for approval to OMB under Docket 0581–0056.

### List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory Committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the regulations at 7 CFR Part 29 are amended as follows:

## PART 29—TOBACCO INSPECTION

### Subpart C—Standards

1. The authority citation for Subpart C continues to read as follows:

**Authority:** 7 U.S.C. 511b, 511m, and 511r.

2. Paragraph (b) of § 29.3053 is revised to read as follows:

**§ 29.3053 Rework.**

* * * * *

(b) Tobacco not properly tied in hands, not packed in bales approximately 1×2×3 feet, not oriented, not packed straight, bales not opened for inspection when chosen by a grader, lots exceeding an average bale weight of 100 pounds, or otherwise not properly prepared for market.

Dated: February 2, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95–3145 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–P

### Consolidated Farm Service Agency

### 7 CFR Part 729

**RIN 0560–AD66**

### 1995-Crop Peanuts National Poundage Quota

**AGENCY:** Consolidated Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** On December 15, 1994, the Secretary of Agriculture (Secretary) announced that the national poundage quota for quota peanuts was established at 1,350,000 short tons (st). This final rule codifies the announced quota. The quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (the 1938 Act).

**EFFECTIVE DATE:** December 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** John A. Craven, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), room 3739, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–690–0446.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This final rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are

Commodity Loans and Purchases—10.051.

**Executive Order 12778**

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because CFSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Paperwork Reduction Act**

The amendments to 7 CFR part 729 set forth in this final rule do not contain information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

**Announcement of the Quota**

Section 358–1(a)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1991 through 1997 marketing years (MY's) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such MY to domestic edible, seed, and related uses. Section 358–1(a)(1) further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1995-crop peanuts runs from August 1, 1995, through July 31, 1996. Poundage quotas for the 1991–95 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conducted December 10 through 13, 1990.

The national poundage quota for the MY for the 1995 crop was established at 1,350,000 pounds, the statutory minimum, based on comparison with the following data:

ESTIMATED DOMESTIC EDIBLE, SEED, AND RELATED USES FOR 1995-CROP PEANUTS

| Item | Farmer stock equivalent (short tons) |
|---|---|
| Domestic edible: | |
| Domestic prod. for domestic food use | 984,000 |
| On-farm and local sales | 19,600 |
| Seed | 100,000 |
| Related uses: | |
| Crushing residual | 130,100 |
| Shrinkage and other losses | 39,400 |
| Segregation 2 and 3 loan transfers to quota loan | 20,000 |
| Total | 1,293,100 |

Estimates of *domestic production for domestic food use* peanuts are developed in two steps. First, the farmer stock equivalent of peanuts for edible food use is projected by USDA's Interagency Commodity Estimates Committee (ICEC). Second, the ICEC food use estimate is reduced by the amount of peanut butter exports, edible peanut imports, and peanut butter imports since the ICEC food use estimate is an aggregate which includes peanut product exports and is derived from total supply that includes imports of peanuts and peanut butter. Peanut product exports are in most instances made from, or otherwise credited under section 359a(e)(1) of the 1938 Act as being made from, additional peanuts.

*Farm use and local sales* is estimated at 1 percent of ICEC's production estimate. This percentage reflects the average difference between USDA production estimates and Federal-State inspection data.

*Seed use* is based on projected 1996-crop planted acreage and a farmer stock equivalent seeding rate of 125 pounds per acre.

The *crushing residual* is the portion of farmer stock quota peanuts suitable only for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. Therefore, a crushing residual representing the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts is included under the ''related uses'' category. The crushing residual is estimated under the assumption that crushing peanuts will be approximately 12 percent, on a farmer stock basis, of total domestic food and seed production.

*Shrinkage and other losses* is an estimate of reduced kernel weight available for marketing as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. The utilized factor is a CFSA estimate equal to the minimum allowable shrinkage used in calculating a handler's obligation to export or crush additional peanuts as set forth in section 359a(d)(2)(iv) of the 1938 Act. Excessive moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered since such factors are accounted for at buying points and do not impact upon quota marketing tonnage.

*Segregation 2 and 3 loan transfers to quota loan* represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for quota loans if it were not for quality problems. In such cases, for price support purposes only, these peanuts may be pledged as collateral for such loans. Regarding the disposition of such peanuts, the Commodity Credit Corporation will ensure that they are crushed for oil.

**List of Subjects in 7 CFR Part 729**

Poundage quotas, Peanuts, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 729 is amended as follows:

## PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

**Authority:** 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. Section 729.214 is amended by adding paragraph (e) to read as follows:

**§ 729.214 National poundage quota.**

* * * * *

(e) The national poundage quota for peanuts for marketing year 1995 is 1,350,000 short tons.

Signed at Washington, DC, on February 2, 1995.

**Bruce R. Weber,**

*Acting Administrator, Consolidated Farm Service Agency.*

[FR Doc. 95–3043 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–05–P

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## Agricultural Marketing Service

## 7 CFR Part 920

**[Docket No. FV94–920–4FR]**

## Kiwifruit Grown in California; Changes in District Boundaries

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

**ACTION:** Final rule.

**SUMMARY:** This final rule redefines the eight district boundaries under the Federal marketing order for kiwifruit grown in California and makes the districts more equitable in terms of kiwifruit production. Kiwifruit growers in each of these districts elect members to represent their districts on the Kiwifruit Administrative Committee (committee), which locally administers the order. Production shifts have occurred within the California production area that have made the districts inequitable in terms of kiwifruit production.

**EFFECTIVE DATE:** February 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901; or Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127.

**SUPPLEMENTARY INFORMATION:** This 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.''

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

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

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 principle 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 action on small entities.

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

There are approximately 65 handlers of California kiwifruit subject to regulation under the order and approximately 600 kiwifruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of handlers and producers of California kiwifruit may be classified as small entities.

The committee met on September 27, 1994, and recommended by a vote of 8 to 1 to change the producer district boundaries.

The 12-member committee consists of one public member (and alternate), one member (and alternate) from each of the eight California districts, and three additional committee members and their alternates to be selected from the three districts with the three highest volumes of fresh shipments in the prior fiscal period. No more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates are growers or employees of growers. The public member and alternate are nominated by the grower members and are selected with the approval of the Secretary.

Under Section 920.31 of the marketing order, the committee may, with the approval of the Secretary, redefine the districts into which the production area is divided. Any such changes shall reflect, insofar as practicable, shifts in kiwifruit production within the districts and the production area.

Pursuant to section 920.12, the production area, which includes all counties in California, is divided into eight districts. District 1 includes Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Butte counties with the exception of that area set aside as ''District 2.'' District 2 includes the 95948 postal zip code area known as Gridley (and surrounding area), incorporating the area located within the following boundaries: the area west of the Feather River; north of the Butte/Sutter County line; east of Pennigton and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue. District 3 includes Yuba, Sutter, Sierra, Nevada, and Placer Counties. District 4 includes Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Marin, Napa, Solano, Yolo, Colusa, and Glenn Counties. District 5 includes San Joaquin, Calaveras, Tuolumne, Merced, Stanislaus, Contra Costa, El Dorado, Amador, Sacramento, Alpine, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito, and Monterey Counties. District 6 includes Mono, Mariposa, Madera, Fresno, and Kings Counties. District 7 includes Tulare and Inyo Counties. District 8 includes San Luis Obispo, Santa Barbara, San Bernardino, Kern, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties.

Over the past ten years, production shifts have occurred within the California production area that have made the districts unequitable in terms of kiwifruit production. At the time the current districts were established, the production per district was fairly equal, but a greater percentage of the California kiwifruit crop was produced in Southern California (District 8) and Central California (District 5). However, kiwifruit production has shifted so that a larger percentage of the crop is concentrated in the Gridley area in Northern California (District 2) and Tulare County in Central California (District 7).

The percentage of production for each of the eight current districts is shown in the table below based on the 1993/94 crop year. The percentage of production for the redefined districts based on the 1993/94 crop year is shown as a basis for comparison. The table outlines the inequity that currently exists among the

districts and how the redefined districts will rectify these inequities.

| District | Current district (percent) | Redefined district (percent) |
|---|---|---|
| 1 | 11.02 | 13.54 |
| 2 | 13.24 | 13.24 |
| 3 | 15.57 | 15.00 |
| 4 | 1.79 | 12.20 |
| 5 | 4.52 | 12.03 |
| 6 | 12.19 | 8.59 |
| 7 | 34.25 | 14.65 |
| 8 | 7.41 | 10.75 |

Under the new boundaries, county lines will be kept intact as boundaries except in Tulare and Butte Counties. This final rule will remove Glenn, Lake, Colusa, Sonoma, Yolo, Solano, Del Norte, Humboldt, Trinity, Mendocino, Napa, and Marin Counties from District 4 and add them to District 1. Sacramento, El Dorado and Amador Counties will be removed from District 5 and added to District 1. Nevada and Placer Counties will be removed from District 2 and added to District 1. Sierra County will be removed from District 3 and added to District 1. In Butte County, the town of Gridley will remain as a whole district—District 2. Calaveras, Tuolumne, Contra Costa, Alpine, San Francisco, and Alameda Counties will be removed from District 5 and added to District 4. Mono and Mariposa Counties will be removed from District 6 and added to District 4. Kings County will be removed from District 6 and added to District 5. Inyo County will be removed from District 7 and added to District 6. Tulare County will be divided into four districts. District 5 will include Tulare County north of Highway 198 to the Kings County boundary. District 6 will include Tulare County south of Highway 198 to Avenue 56, excluding the west side of Highway 65 between Highway 137 and Avenue 56. District 7 will include Tulare County west of Highway 65 between Highway 137 and Avenue 56, and District 8 will include Tulare County south of Avenue 56.

Committee members serve 2-year terms of office beginning August 1, with about one-half of the membership selected each year. Of the current members, seven members are serving terms of office that expire on July 31, 1995, and five members are serving terms of office that expire on July 31, 1996. The committee recommended that all of the present committee members continue to serve through July 31, 1995, and that this redistricting be effective for nominations for all members to serve for terms beginning August 1, 1995. One-half of the committee members selected for terms of office beginning August 1, 1995, will serve one-year terms and the other half will serve two-year terms, with the determination of the terms for each member to be decided by lot.

The one voter in opposition to the recommendation wanted to allocate the additional three committee members and their alternates to the three districts with the highest number of growers rather than to the three districts with the highest production. However, the marketing order requires that the three additional members and alternates be allocated to the highest producing districts.

A proposed rule concerning this action was published in the **Federal Register** on December 9, 1994 [59 FR 63731], with a 30 day comment period ending January 9, 1995. No comments were received.

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

After consideration of all relevant matter presented, 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because: 1) Nomination procedures begin in March for those members and alternates to be selected for terms beginning in 1995; 2) Handlers are aware of this rule, which was recommended by the committee at a public meeting; and 3) a 30-day comment period was provided for in the proposed rule and no adverse comments were received.

**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 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 920.131 is added to read as follows:

**§ 920.131 Redistricting of kiwifruit districts.**

Pursuant to § 920.31 (l) the districts are redefined as follows:

(a) *District 1* shall include the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Tehama, Plumas, Glenn, Lake, Colusa, Sonoma, Yolo, Solano, Napa, Marin, Sacramento, Sierra, Nevada, Placer, El Dorado, Amador, and Butte (with the exception of that area set aside as ''District 2'').

(b) *District 2* shall include the 95948 postal zip code area known as Gridley in Butte County, and the area surrounding Gridley, incorporating the area located within the following boundaries: The area west of the Feather River; north of the Butte/Sutter County line; east of Pennington and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue.

(c) *District 3* shall include the counties of Sutter and Yuba.

(d) *District 4* shall include the counties of San Francisco, San Mateo, Santa Cruz, Contra Costa, Alameda, Santa Clara, Monterey, San Benito, San Joaquin, Calaveras, Alpine, Mono, Tuolumne, Stanislaus, Merced, Mariposa, Madera, and Fresno.

(e) *District 5* shall include Kings county and that portion of Tulare County north of Highway 198.

(f) *District 6* shall include Inyo County and that portion of Tulare County south of Highway 198 to Avenue 56, excluding the west side of Highway 65 between Highway 137 and Avenue 56.

(g) *District 7* shall include that portion of Tulare County of Tulare west of Highway 65 and between Highway 137 and Avenue 56.

(h) *District 8* shall include of Kern, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, San Diego, Los Angeles, Orange, Riverside, San Diego, Imperial Counties and that portion of Tulare County south of Avenue 56.

Dated: February 2, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–3148 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–W

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## 7 CFR Parts 1005, 1007, 1011, 1046

**[DA–95–06]**

## Milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Suspension of Certain Provisions of the Orders

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

**ACTION:** Suspension of rules.

**SUMMARY:** This document extends a suspension of certain provisions of the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk orders from March 1, 1995, through February 28, 1996, or until the conclusion of an amendatory proceeding (DA–94–12) which addressed these matters.

**EFFECTIVE DATE:** March 1, 1995, through February 28, 1996.

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

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

Notice of Proposed Suspension: Issued November 21, 1994; published November 25, 1994 (59 FR 60572).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory burden on small entities by removing pricing disparities that are causing or could cause financial hardship for certain regulated plants.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on November 25, 1994 (59 FR 60572), concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and three comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the period of March 1, 1995, through February 28, 1996, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1005.7(d)(3) of the Carolina order, the words ''from'', ''there'', ''a greater quantity of route disposition, except filled milk, during the month'', and ''than in this marketing area'';
2. In § 1007.7(e)(3) of the Georgia order, the words '', except as provided in paragraph (e)(4) of this section,'';
3. In § 1007.7 of the Georgia order, paragraph (e)(4);
4. In § 1011.7(d)(3) of the Tennessee Valley order, the words ''from'', ''there'', ''a greater quantity of route disposition, except filled milk, during the month'', and ''than in this marketing area''; and
5. In § 1046.2 of the Louisville-Lexington-Evansville order, the word ''Pulaski''.

## Statement of Consideration

This document extends an existing suspension that has been in effect since March 1, 1994. This suspension allows a distributing plant operated by Land-O-Sun Dairies, Inc., at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order (Order 11) to be regulated under that order rather than the Carolina order (Order 5) despite the plant having greater sales in the Carolina marketing area. It also allows a distributing plant operated by Southern Belle Dairy Company, Inc., located at Somerset, Kentucky, that has been regulated under the Tennessee Valley order for the past five years to remain regulated there even if it develops greater sales in the Louisville-Lexington-Evansville (Order 46) marketing area. In addition, the suspension allows a supply plant operated by Armour Food Ingredients at Springfield, Kentucky, that has been supplying the Southern Belle plant to remain pooled under the Tennessee Valley order without having to make uneconomic shipments of milk that it contends would be necessary to remain pooled if the Somerset plant were regulated under Order 46.

The problems prompting the existing suspension of these provisions were thoroughly explained in a suspension order (DA–93–29) issued on March 28, 1994 (published April 1, 1994 (59 FR 15315)). In that document, it was noted that ''orderly marketing will be best preserved by adopting the proposed suspension, for a 12-month period only, to allow the industry time to develop proposals for a hearing to be held before the suspension period expires.'' [emphasis added]

Due to significant changes that have occurred in these markets within the past year, the Department was delayed in holding the promised hearing until January 4, 1995. (The one-day hearing was held in Charlotte, North Carolina.) Advised that the Department would be unable to evaluate the hearing record and amend the orders by the time the current suspension expires on February 28, both Southern Belle Dairy Company and Land-O-Sun Dairies, Inc., who were proponents of the existing suspension, submitted requests to extend the current suspension until the amendatory proceeding was concluded.

Mid-America Dairymen, Inc. (Mid-America) and Southern Milk Sales, on behalf of their member-producers who deliver producer milk to plants regulated under the Orders 5, 7, 11, and 46, filed a comment letter supporting the continued suspension. Coburg Dairy Inc. (Coburg), Edisto Milk Producers Association, and Purity Dairies, Inc. (Purity), filed comment letters in opposition to the continued suspension. Coburg and Edisto reiterated their opposition to the existing suspension and questioned the rationale for continuing it, but offered no opposition testimony to proposals at the hearing that would permanently regulate the Land-O-Sun and Southern Belle plants under Order 11. Purity Dairies, a Nashville, Tennessee, handler that is regulated under the Georgia order (Order 7), stated that it cannot procure milk from its traditional supply area in

central Kentucky in competition with Armour and Southern Belle because its blend price in Nashville is no longer competitive with the Order 11 blend price.

While it is true that Purity's blend price under Order 7 and former[1] Order 98 (Nashville, Tennessee) was frequently close to or below the Order 11 blend price during the months of December 1993 through April 1994, data introduced into the record of the Charlotte hearing indicate that since May 1994 the Nashville-Springfield price relationship has returned to a more normal pattern, as shown in the Table 1.

TABLE 1.—COMPARISON OF BLEND PRICES: JANUARY 1992–NOVEMBER 1994 NASHVILLE, TN (ORDER 98/7)—SPRINGFIELD, KY (ORDER 11)

| | Average blend price at Nashville, TN, under order 98/7 | Average blend price at Springfield, KY, under order 11 | Difference |
|---|---|---|---|
| 1/92–11/93 | 13.85 | 13.58 | .26 |
| 12/93–4/94 | 14.22 | 14.33 | –.11 |
| 5/94–11/94 | 14.01 | 13.72 | .28 |

If Purity has difficulty in attracting a milk supply, it should direct its concern to the open record for the proposed Southeast marketing area, which encompasses the Nashville area.

There was no testimony at the January 4 hearing in opposition to either the continuation of the current suspension or to the Southern Belle proposals, which, as noted above, effectively would allow Southern Belle, and therefore Armour, to be permanently regulated under Order 11.

Accordingly, it is necessary to suspend the aforesaid provisions from March 1, 1995, through February 28, 1996, or until such earlier time as an order amending the aforesaid orders is issued on the basis of the January 4, 1995, hearing record.

**List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046**

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Parts 1005, 1007, 1011, and 1046, are amended as follows:

1. The authority citation for 7 CFR Part 1005, 1007, 1011, and 1046 continues to read as follows:

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

## PART 1005—MILK IN THE CAROLINA MARKETING AREA

**§ 1005.7 [Suspended in part]**

2. In § 1005.7(d)(3), the words ''from'', ''there'', ''a greater quantity of route disposition, except filled milk, during the month'', and ''than in this marketing area'' are suspended from March 1, 1995, through February 28, 1996;

## PART 1007—MILK IN THE GEORGIA MARKETING AREA

**§ 1007.7 [Suspended in part]**

3. In § 1007.7(e)(3), the words '', except as provided in paragraph (e)(4) of this section,'' are suspended from March 1, 1995, through February 28, 1996;

4. In § 1007.7, paragraph (e)(4) is suspended from March 1, 1995, through February 28, 1996;

## PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

**§ 1011.7 [Amended]**

5. In § 1011.7(d)(3), the words ''from'', ''there'', ''a greater quantity of route disposition, except filled milk, during the month'', and ''than in this marketing area'' are suspended from March 1, 1995, through February 28, 1996; and

## PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

**§ 1046.2 [Amended]**

6. In § 1046.2 of the Louisville-Lexington-Evansville order, the word ''Pulaski'' is suspended from March 1, 1995, through February 28, 1996.

Dated: February 2, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95–3143 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 1050

**[DA–95–09]**

## Milk in the Central Illinois Marketing Area; Suspension of Certain Provisions of the Order

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

**ACTION:** Suspension of rule.

**SUMMARY:** This document suspends the aggregate limits on the amount of producer milk that may be diverted from a pool plant under the Central Illinois Federal milk marketing order for an indefinite period beginning with the month of January 1995. The proposal was submitted by Prairie Farms Dairy, Inc., and Associated Milk Producers, Inc. Both cooperatives contend the suspension is necessary to ensure that producers historically associated with the market will continue to have their milk pooled under the order without having to move milk uneconomically.

**EFFECTIVE DATE:** February 8, 1995.

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

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

Notice of Proposed Suspension: Issued December 28, 1994; published January 4, 1995 (60 FR 379).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

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

[1] The Nashville, Tennessee, order was terminated effective July 31, 1993.

has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 4, 1995 (60 FR 379), concerning a proposed suspension of the aggregate diversion limits for a pool distributing plant regulated under Order 50. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for an indefinite period beginning January 1, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1050.13(d)(2), the words ''*: Provided,* That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section''.

**Statement of Consideration**

This rule suspends the aggregate limit on the amount of milk that may be diverted from a pool plant during the months of August through April. At the present time, for each day's production of a producer's milk that is delivered to a pool plant during these months, another day's production may be diverted to a nonpool plant. However, in addition to this individual producer limit, there is an aggregate limit of 35 percent that applies to the total amount of milk that a pool plant operator may divert during the month. The suspension removes this 35 percent aggregate limit, effectively increasing the aggregate limit to 50 percent of a pool plant operator's total producer receipts during the month.

In their letter requesting the suspension, Prairie Farms Dairy, Inc. (Prairie Farms) and the Morning Glory Farms region of Associated Milk Producers, Inc. (AMPI), explained that Prairie Farms now operates the only distributing plant under the Central Illinois order (Order 50) and that both cooperatives supply milk to this plant, which is located in Peoria. For several reasons, including the availability of abundant quantities of good quality feed, milk production is up substantially in recent months compared to the same period of last year. This has resulted in both cooperatives having to divert additional milk to nearby unregulated manufacturing plants on weekends, holidays, and other days when the Peoria plant is not in operation.

Prairie Farms and AMPI state that the suspension will allow them to continue to balance the supply of milk needed at the Peoria plant while at the same time eliminate the need to haul milk in and out of the plant merely to keep their milk pooled under the order.

Market statistics indicate that the average daily milk marketed per farm in the Central Illinois marketing area during August through November 1994 was about 300 pounds greater than for the same period in 1993. This increase in production, in conjunction with the single pool plant outlet available in this market, supports a suspension of the aggregate diversion limitations for an indefinite period so that producers whose milk has long been associated with the Central Illinois marketing area will continue to benefit from pooling and pricing under the order.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

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

**List of Subjects in 7 CFR Part 1050**

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1050, is amended as follows:

## PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

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

**§ 1050.13 [Suspended in part]**

**Note:** This amendment will not be published in the annual *Code of Federal Regulations.*

2. In § 1050.13(d)(2), the words ''*: Provided,* That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section'' are suspended for an indefinite period beginning January 1, 1995.

Dated: February 2, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95–3149 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 1212

**[FV–93–707FR]**

**RIN 0581–AB19**

## Lime Research, Promotion, and Consumer Information Order; Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Lime Research, Promotion, and Consumer Information Order. These amendments revise the definition of the term ''lime'' in order to cover seedless rather than seeded limes; increase the exemption level from less than 35,000 pounds annually to less than 200,000; alter the size, composition, and term of office of the Lime Board; and make necessary conforming changes. This document is necessary to implement amendments to the Lime Research, Promotion, and Consumer Information Act of 1990.

**EFFECTIVE DATE:** February 8, 1995.

**ADDRESSES:** Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Richard Schultz at the above address or telephone (202) 720–5976.

**SUPPLEMENTARY INFORMATION:** This final rule amends the Lime Research, Promotion, and Consumer Information Order [7 CFR 1212], herein referred to as the Order. The Order is effective under the Lime Research, Promotion, and Consumer Information Act of 1990 (1990 Act) [Pub. L. 101–624, 7 U.S.C. 6201–6212], as amended by the Lime Research, Promotion, and Consumer Information Improvement Act (1993 Act) [Pub. L. 103–194, Dec. 14, 1993].

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1957 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order or 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 an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

## Regulatory Impact Analysis

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.

The 1990 Act exempted lime producers who produce less than 35,000 pounds annually for the fresh market from being subject to the Order. When the 1990 Act was enacted, there were an estimated 325 producers who produced at least 35,000 pounds annually and were subject to the Order. When the 1993 Act was enacted, the exemption level was increased to less than 200,000 pounds annually. At this exemption level, there are an estimated 50 producers who produce at least 200,000 pounds and will be subject to the Order. Despite this increase in exemption level, the majority of producers subject to the Order will still be classified as small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those having annual receipts of less than $500,000.

The increase in exemption level is not expected to significantly affect the number of first handlers who are responsible for collecting and remitting producer assessments to the Lime Board (Board). The number of first handlers remains at approximately 25. The increase in exemption level, which also applies to imports, is not expected to significantly affect the number of importers of fresh market limes. The number of importers subject to the Order will increase from 5 to 35. However, this increase in importers is not primarily due to the increase in the exemption level but rather to the changing character of the lime industry. As in the case of producers, the majority of first handlers and importers subject to the Order will still be classified as small entities. Small agricultural service firms, which include handlers and importers, have been defined by the SBA as those having annual receipts of less than $5,000,000.

Since the enactment of the 1990 Act, the character of the lime industry has significantly changed. As a result of the extensive damage to lime orchards in Florida by Hurricane Andrew in August 1992, domestic production has plummeted and the volume of imports has increased dramatically. Domestic production is not expected to reach pre-Hurricane Andrew levels for possibly two to three years because Florida accounted for a majority of domestic production.

Shipment reports of domestic limes, from January 1, 1994, through December 31, 1994, indicate truck shipments of 11.32 million pounds from Florida and 4.23 million pounds from California, for a total of 15.55 million pounds. Shipment reports of imported limes for the most recent 12 month period, November 1, 1993, through October 31, 1994, indicate truck shipments of 240.46 million pounds from Mexico plus an additional 8.02 million pounds from 13 other countries. Imports currently represent roughly 94 percent of lime shipments in the United States.

The Order, prior to this action, required lime producers, producer-handlers, and importers who produce or import 35,000 pounds or more annually for fresh market to pay an assessment not to exceed one cent per pound of limes. This action limits assessment obligations to producers, producer-handlers, and importers who produce or import 200,000 pounds or more annually. The expected results of this action will significantly decrease the number of persons subject to the Order and decrease the amount of assessments collected.

This action also alters the size and composition of the Board, the administrative body appointed by the Secretary to operate the Order, from 11 members to seven. Further, it reduces the number of producer members serving on the Board from seven to three. The number of importer members will remain at three. The seventh member will be the public member. These changes to the Board's size and membership are reflective of the current structure of the lime industry.

Accordingly, the Administrator of the AMS has determined that the changes reflected in this action will not have a significant economic impact on a substantial number of small entities.

## Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] the information collection requirements contained in the Order have been approved by the OMB and were assigned OMB number 0581–0093, except for the Board nominee background statement form which was assigned OMB number 0505–0001. This action will generally reduce the number of information collections, and hence the reporting burden. The information collection requirements of the Order are as follows:

(1) *A periodic report by each first handler who handles limes for fresh market.* The estimated number of respondents required to complete this report is 25, each submitting a maximum of 12 responses per year, with an estimated average reporting burden of 30 minutes per response. First handlers may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) *A periodic report by each importer who imports 200,000 or more pounds annually for fresh market.* The estimated number of respondents completing this report is 35, each

submitting a maximum of 12 responses per year, with an estimated average reporting burden of 15 minutes per response;

(3) *A refund application form for persons who desire a refund of their assessments.* The estimated number of respondents completing this application is five, each submitting two responses per year, with an estimated average reporting burden of 15 minutes per response;

(4) *An importer reimbursement application for persons who import less than 200,000 pounds annually and desire to be reimbursed for assessments collected by the U.S. Customs Service.* The estimated number of respondents completing this application is 20, each submitting one response per year, with an estimated average reporting burden of 15 minutes per response;

(5) *An exemption application for persons who produce or import less than 200,000 pounds annually for fresh market to be exempt from assessments and recordkeeping requirements.* The estimated number of respondents completing this application is 600, each submitting one response per year, with an estimated average burden of 15 minutes per response;

(6) *A referendum ballot to be used not later than 30 months after assessments begin under the amended Order and periodically thereafter to indicate whether producers and importers favor continuance of the Order.* The estimated number of respondents completing this ballot is 85, each submitting one response approximately every five years, or an annual average of 10 respondents, with an estimated average reporting burden of 15 minutes per response;

(7) *A nominee background statement form for Board member and alternate positions.* Two nominees will be nominated for each open position on the Board. The estimated number of respondents completing this form is 28 during the first year of Order operations, and approximately eight per year thereafter, with an estimated average reporting burden of 30 minutes per response; and

(8) *A requirement to maintain records sufficient to verify reports submitted under the Order.* The estimated number of persons required to comply with this requirement is 70, each of whom will have an estimated annual burden of seven minutes.

**Background**

The 1990 Act was enacted on November 28, 1990, for the purpose of establishing an orderly procedure for the development and financing of an effective and coordinated program of research, promotion, and consumer information to strengthen the domestic and foreign markets for limes. The Order required by the 1990 Act became effective on January 27, 1992 [57 FR 2985], after notice and comment rulemaking.

In March 1992 the Department conducted nomination meetings to nominate lime producers and importers for appointment to the Board. The Board members were appointed by the Secretary in September 1992, and the Board conducted its first meeting at the Department in Washington, DC in October 1992. During the course of this meeting, the Board and the Department concluded that a technical amendment was needed to cover seedless rather than seeded limes. Consequently, full implementation of the Order was delayed until the enactment of such technical amendment.

The 1993 Act contained the necessary technical amendment to cover seedless limes (*citrus latifolia*) rather than seeded limes (*citrus aurantifolia*) under the Order. The 1993 Act also provided for increasing the exemption level from less than 35,000 pounds annually to less than 200,000; terminating the initial Board; changing the size and composition of the Board; and delaying the initial referendum date.

A proposed rule published in the April 7, 1994, issue of the **Federal Register** [58 FR 3446] invited comments on amending the Order to reflect the provisions of the 1993 Act. The Act, as amended, revises the definition of the term ''lime'' from *citrus aurantifolia* to *citrus latifolia;* increases the exemption level from less than 35,000 pounds annually to less than 200,000; alters the size, composition, and term of office of the Board; and makes conforming changes.

The Department received one comment on the April 7 proposed rule. This comment was received from the California Association of Limegrowers. The commenter requested clarification on whether producers and importers subject to the Order will be required to pay an assessment on their total annual production or importation, or on the portion of their volume surpassing the exemption level of less than 200,000 pounds annually. In response to this comment, producers and importers of 200,000 pounds or more of limes annually will be required to pay assessments on their total annual production or importation.

This rule changes the definition of ''lime'' from *citrus aurantifolia* (seeded lime) to *citrus latifolia* (seedless lime) in § 1212.5 of the Order. Although the intent of the Act was to cover seedless limes, the definition of ''lime'' in § 1953(6) of the 1990 Act applied only to seeded limes.

This rule increases the producer and importer exemption level from less than 35,000 pounds annually to less than 200,000 pounds annually. This revised exemption level was reached through industry consensus. Therefore, this rule changes references to 35,000 pounds in §§ 1212.65, 1212.68, and 1212.69 of the Order to 200,000 pounds. In addition, a new paragraph (d) has been added to § 1212.68 of the Order whereby exempt importers may obtain a refund of assessments collected by the U.S. Customs Service.

Moreover, this rule changes the size of the Board from 11 members to seven. The Board, prior to this action, was composed of seven producer members, three importer members, and their alternates. The public member position was vacant. This action decreases the number of producer members from seven to three, which more fairly reflects the current structure of the lime industry. Therefore, §§ 1212.30, 1212.32, and 1212.34 of the Order have been either amended or revised to make these changes in the Board's composition.

This rule also changes the Board's composition in § 1212.30(b) relative to representation of producer and importer members within the two districts established under the Order. District 1 includes the States east of the Mississippi River, Puerto Rico, and the District of Columbia. District 2 includes the States west of the Mississippi River. Prior to this action, the Order provided for six producer members and one importer member and their alternates from District 1, and one producer member and two importer members and their alternates from District 2. This action reduces the number of producer members from District 1 from six to two by amending and revising § 1212.30 of the Order.

Further, as a result of this allocation of Board membership, the realignment of districts or reapportionment of membership between Districts 1 and 2 on the basis of changes in production and importation is no longer necessary. Such realignment or reapportionment is inconsistent with the 1993 Act. Therefore, any references to such realignment or reapportionment have been removed from §§ 1212.18, 1212.30, and 1212.40 of the Order.

Reducing the size of the Board affects the requirements for a quorum and the number of trustees which will be designated if the program were to be terminated. Therefore, this action

amends § 1212.37 of the Order by decreasing from six to four the number of members needed to constitute a quorum at Board meetings and by changing the number of trustees designated in § 1212.84 of the Order from five to four.

The 1993 Act requires that appointments of the Board members made under the 1990 Act be terminated. Such appointments will be terminated on the effective date of this rule and, when practicable, new appointments will be made by the Secretary. The 1993 Act also specifies that the initial Board members under the amended Order will serve initial terms of office of 30 months. This change is directly related to the provision of the 1993 Act which delays the deadline for the initial referendum until 30 months after the date on which the collection of assessments begin under the amended Order. A conforming change in § 1212.67 of the Order pursuant to the 1993 provision has also been made.

In order to provide administrative continuity during the 30 months prior to the initial continuance referendum, the 1993 Act provides that the initial Board members under the amended Order serve 30-month concurrent terms of office. The 1990 Act provided for the staggering of the terms of office of the initial Board members. Although staggered terms of office are generally desirable, this created a situation where 30 percent or more of the Board's membership could change prior to the initial referendum. In contrast, the 1993 Act provides that the initial Board members under the amended Order serve 30-month concurrent terms of office and that staggered terms be reinstituted after the referendum if the program continues. The purpose of this change is to minimize the organizational uncertainties associated with Board member turnover and to facilitate organizational continuity during the period prior to the initial referendum. Therefore, this action also revises § 1212.34 of the Order.

In addition, a technical change is made to § 1212.64 of the Order to add the code number for limes from the Harmonized Tariff Schedule of the United States.

After consideration of all relevant material presented, it is found that the amendments to the Order herein tend to effectuate the declared policy of the Act, as amended.

Pursuant to the provisions of 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) this action is required by the 1993 Act; (2) the proposed rule provided a 30-day period to allow interested parties to comment prior to this action; (3) the amended Order cannot be fully implemented until this rule becomes effective and the initial Board is appointed; and (4) no useful purpose would be served by a delay of the effective date.

**List of Subjects in 7 CFR Part 1212**

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1212 is amended as follows:

## PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1212 is revised to read as follows:

**Authority:** 7 U.S.C. 6201–6212.

## Subpart A—Lime Research, Promotion, and Consumer Information Order

### § 1212.2 [Amended]

2. Section 1212.2 is amended by removing the phrase ''and any amendments thereto'' and adding in its place ''as amended''.

### § 1212.5 [Amended]

3. Section 1212.5 is amended by removing the word ''*aurantifolia*'' and adding in its place ''*latifolia*''.

### § 1212.18 [Amended]

4. Section 1212.18 is amended by removing the phrase '', or other subdivisions as may be prescribed pursuant to § 1212.40(o)''.

5. In § 1212.30 paragraph (a) is amended by removing the word ''Seven'' and adding in its place ''Three''; paragraph (b) is revised; and paragraph (c) and the undesignated concluding text are removed as follows:

### § 1212.30 Establishment and membership.

* * * * *

(b) Two of the three producer members shall be producers of limes in District 1, and one producer member shall be a producer of limes in District 2. One of the three importer members shall be an importer of limes in District 1, and two importer members shall be importers of limes in District 2. The public member shall be selected at large.

### § 1212.31 [Amended]

6. Section 1212.31 is amended by revising the section heading and paragraph (a), designating the existing text of paragraph (k) as paragraph (k)(1) and revising it, and designating the concluding text at the end of the section as paragraph (k)(2) to read as follows:

### § 1212.31 Nominations.

* * * * *

(a) Except for the member and alternate member who represent the general public, nominations of initial members to the Board shall be submitted to the Secretary for selection as soon as practicable after February 8, 1995. In subsequent years, nominations of members to the Board shall be submitted to the Secretary by the Board by August 1. Nominations may be made by means of group meetings for producer and importer members or by mail ballot.

* * * * *

(k) (1) In the event of a mail ballot, all qualified persons interested in serving on the Board or who are interested in nominating another person to serve on the Board shall submit to the Board in writing such information as name, mailing address, number of pounds produced, marketed, handled, or imported, or other information as may be required, in order to place that person on the ballot: *Provided*, That in the case of nominating the initial Board under the amended Act, the Secretary shall mail out the ballots and cause press releases concerning the distribution of ballots and pertinent information on balloting to be distributed to the media in the lime producing and importing areas. These ballots shall be returned to the Secretary.

* * * * *

### § 1212.32 [Amended]

7. Section 1212.32 is amended by removing the word ''seven'' and adding in its place ''three''.

8. Section 1212.34 is revised to read as follows:

### § 1212.34 Term of office.

(a) The initial members of the Board and their respective alternates shall serve 30-month concurrent terms of office.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Subsequent appointments to the Board will be for a term of 3 years, except that during the initial 3-year appointments, members and their alternates shall serve terms as follows: one producer member from District 1 and one importer member from District 2 shall be appointed for a term of 1 year;

the importer member from District 1 and the producer member from District 2 shall be appointed for a term of 2 years; and one producer member from District 1 and one importer member from District 2 shall be appointed for a term of 3 years.

(d) Board members and alternates shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(e) No member or alternate shall serve more than two successive terms. However, members and alternates serving a term of 1 year, after having served a 30-month concurrent term, may serve a third successive term.

**§ 1212.37 [Amended]**

9. In § 1212.37 paragraph (a) is amended by removing the word ''Six'' and adding in its place ''Four''.

**§ 1212.40 [Amended]**

10. Section 1212.40 is amended by removing paragraph (o) and redesignating paragraphs (p), (q), and (r) as paragraphs (o), (p), and (q) respectively.

11. Section 1212.64 is amended by adding a new paragraph (j) to read as follows:

**§ 1212.64 Assessments.**

* * * * *

(j) The import assessment shall be uniformly applied to imported limes that are identified by the number 0805.90.0010 in the Harmonized Tariff Schedule of the United States or any other number used to identify limes as defined in § 1212.5.

**§ 1212.65 [Amended]**

12. In § 1212.65 paragraph (c)(2)(viii) is amended by removing the number ''35,000'' and adding in its place ''200,000''.

13. Section 1212.67 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 1212.67 Refunds.**

(a) Subject to the provisions of this section any producer, producer-handler, or importer shall have the right to personally demand and receive from the Board a refund of assessments paid by or on behalf of such producer, producer-handler, or importer for any calendar month during the period beginning on the date on which the collection of assessments begins under this Order and ending on the effective date of the referendum mandated by section 1960(a) of the Act; *Provided*, That:

* * * * *

**§ 1212.68 [Amended]**

14. In § 1212.68 paragraph (a) is amended by removing the number ''35,000'' wherever it appears and adding in its place ''200,000''; and by adding a new paragraph (d) to read as follows:

**§ 1212.68 Exemption from assessment.**

* * * * *

(d) Importers who are exempt from assessment shall be entitled to reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Board for reimbursement of such assessments paid on a marketing year basis. The Board shall reimburse such assessments within 30 days of receiving an importer's application.

**§ 1212.69 [Amended]**

15. Section 1212.69 is amended by removing the number ''35,000'' and adding in its place ''200,000''.

**§ 1212.84 [Amended]**

16. In § 1212.84 paragraph (a) is amended by removing the word ''five'' and adding in its place ''four''.

Dated: February 2, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95–3144 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 94–AWA–6]**

## Modification of the Flint Bishop International Airport, MI, Madison Dane County Regional Airport-Truax Field, WI, Peoria, Greater Peoria Regional Airport, IL, Toledo Express Airport, OH, Columbus AFB, MS, and the Jackson International Airport, MS, Class C Airspace Areas and Establishment of the Madison Dane County Regional Airport-Truax Field, WI, and Jackson International Airport, MS, Class E Airspace Areas

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the Flint Bishop International Airport, MI, Madison Dane County Regional Airport-Truax Field, WI, Peoria, Greater Peoria Regional Airport, IL, Jackson International Airport, MS, Toledo Express Airport, OH, and the Columbus AFB, MS, Class C airspace areas. The effective hours are amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. The designated boundaries and altitudes of these Class C airspace areas will remain as they currently exist. In addition, this action establishes Class E airspace at Madison Dane County Regional Airport-Truax Field, WI, and Jackson International Airport, MS, when the associated radar approach control facility is not in operation. Also, Class E airspace is established as an extension to the Madison Dane County Regional Airport-Truax Field, WI, Class C airspace area to provide controlled airspace to instrument operations.

**EFFECTIVE DATE:** 0901 UTC, March 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

**SUPPLEMENTARY INFORMATION:**

### History

On January 13, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Flint Bishop International Airport, MI, Madison Dane County Regional Airport-Truax Field, WI, Peoria, Greater Peoria Regional Airport, IL, Toledo Express Airport, OH, Columbus AFB, MS, and the Jackson International Airport, MS, Class C airspace areas and establish the Madison Dane County Regional Airport-Truax Field, WI, and the Jackson International Airport, MS, Class E airspace areas (60 FR 3109). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. It was also determined that Class E extensions are needed for instrument approach procedures at Madison Dane County Regional Airport-Truax Field, WI. Therefore, this action establishes Class E3 airspace to coincide with the effective hours of the Madison Dane County Regional Airport-Truax Field, WI, Class C airspace area. Except for editorial changes, and establishment of the E3 designation for Madison Dane County Regional Airport-Truax Field,

this amendment is the same as that proposed in the notice. Class C, Class E2, and Class E3 airspace designations are published in paragraphs 4000, 6002 and 6003, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document will be published subsequently in the Order.

## The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Flint Bishop International Airport, MI, Madison Dane County Regional Airport-Truax Field, WI, Peoria, Greater Peoria Regional Airport, IL, Toledo Express Airport, OH, Columbus AFB, MS, and the Jackson International Airport, MS, Class C airspace areas by amending the effective hours to coincide with the associated radar approach control facility's hours of operation. The designated boundaries and altitudes of these Class C airspace areas will not change. In addition, this action establishes the Madison Dane County Regional-Truax Field Airport, WI, Class E2 and E3 airspace areas and the Jackson International Airport, MS, Class E2 airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 4000—Subpart C—Class C Airspace*

* * * * *

**AGL MI C Flint Bishop International Airport, MI [Revised]**

Bishop International Airport, MI
(Lat. 42°57′56″ N., long. 83°44′37″ W.)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Bishop International Airport; and that airspace extending upward from 2,100 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**AGL WI C Madison Dane County Regional Airport-Truax Field, WI [Revised]**

Dane County Regional Airport-Truax Field, WI
(Lat. 43°08′22″ N., long. 89°20′14″ W.)
Waunakee Airport
(Lat. 43°11′00″ N., long 89°27′00″ W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Dane County Regional Airport-Truax Field excluding that airspace within a 1½-mile radius of the Waunakee Airport; and that airspace extending upward from 2,300 feet MSL to and including 4,900 feet MSL within a 10-mile radius of the Dane County Regional Airport-Truax Field. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**AGL IL C Peoria, Greater Peoria Regional Airport, IL [Revised]**

Greater Peoria Regional Airport, IL
(Lat. 40°39′53″ N., long. 89°41′30″ W.)

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Greater Peoria Regional Airport and that airspace within a 10-mile radius of the airport extending upward from 2,000 feet MSL to and including 4,700 feet MSL, from the 284° bearing from the airport clockwise to the 154° bearing from the airport, and that airspace within a 10-mile radius of the airport extending upward from 1,800 feet MSL to and including 4,700 feet MSL from the 154° bearing from the airport clockwise to the 284° bearing from the airport.

* * * * *

**AGL IL C Toledo Express Airport, OH [Revised]**

Toledo Express Airport, OH
(Lat. 41°35′12″ N., long. 83°48′28″ W.)

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Toledo Express Airport; and that airspace extending upward from 2,000 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the airport.

* * * * *

**ASO MS C Columbus AFB, MS [Revised]**

Columbus AFB, MS
(Lat. 33°38′37″ N., long. 88°26′38″ W.)

That airspace within a 5-mile radius of Columbus AFB extending upward from the surface to and including 4,200 feet MSL; and that airspace within a 10-mile radius of Columbus AFB extending upward from 1,500 feet MSL to and including 4,200 feet MSL. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**ASO MS C Jackson International Airport, MS [Revised]**

Jackson International Airport, MS
(Lat. 32°18′41″ N., long. 90°04′33″ W.)

That airspace within a 5-mile radius of the Jackson International Airport extending upward from the surface to and including 4,400 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,700 feet MSL to and including 4,400 feet MSL. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002—Subpart E—Class E Airspace Areas Designated as a Surface Area for an Airport*

* * * * *

**AGL WI E2 Madison Dane County Regional Airport-Truax Field, WI [New]**

Dane County Regional Airport-Truax Field, WI
(Lat. 43°08′22′ N., long. 89°20′14″ W.)
Waunakee Airport
(Lat. 43°11′00″ N., long 89°27′00″ W.)

Within a 5-mile radius of the Dane County Regional Airport-Truax Field and within 2.4 miles each side of the 358° bearing from the Dane County Regional Airport-Truax Field extending from the 5-mile radius to 7 miles north of the Dane County Regional Airport-Truax Field and within 2.4 miles each side of the 320° bearing from the Dane County Regional Airport-Truax Field extending from the 5-mile radius to 7 miles northwest of the Dane County Regional Airport-Truax Field

excluding that airspace within a 1½-mile radius of the Waunakee Airport and within 2.4 miles each side of the 134° bearing from the Dane County Regional Airport-Truax Field extending from the 5-mile radius to 7 miles southeast of the Dane County Regional Airport-Truax Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**ASO MS E2 Jackson International Airport, MS [New]**

Jackson International Airport, MS
(Lat. 32°18′41″ N., long. 90°04′33″ W.)

Within a 5-mile radius of Jackson International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6003—Subpart E—Class E Airspace Areas Extending Upward From the Surface Designated as an Extension to a Class C Surface Area*

* * * * *

**AGL WI E3 Madison Dane County Regional Airport-Truax Field, WI [New]**

Dane County Regional Airport-Truax Field, WI
(Lat. 43°08′22″ N., long. 89°20′14″ W.)
Waunakee Airport
(Lat. 43°11′00″ N., long 89°27′00″W.)

That airspace extending upward from the surface within 2.4 miles each side of the 358° bearing from the Dane County Regional Airport-Truax Field, extending from the 5-mile radius to 7 miles north of the Dane County Regional Airport-Truax Field and within 2.4 miles each side of the 320° bearing from the 5-mile radius to 7 miles northwest of the Dane County Regional Airport-Truax Field excluding that airspace within a 1½-mile radius of the Waunakee Airport and within 2.4 miles each side of the 134° bearing from the Dane County Regional Airport-Truax Field, extending from the 5-mile radius to 7 miles southeast of the Dane County Regional Airport-Truax Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on February 2, 1995.

**Nancy B. Kalinowski,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 95–3121 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 71

**[Airspace Docket No. 94–AWA–5]**

## Modification of the Birmingham Municipal, AL, Huntsville International-Carl T. Jones Field, AL, Columbia Metropolitan, SC, and Chattanooga Lovell Field, TN, Class C Airspace Areas and Establishment of the Huntsville International-Carl T. Jones Field, AL, and Chattanooga Lovell Field, TN, Class E Airspace Areas

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

**ACTION:** Final rule.

**SUMMARY:** This amendment modifies the Class C airspace areas at Birmingham Municipal, AL, Huntsville International-Carl T. Jones Field, AL, Columbia Metropolitan, SC, and Chattanooga Lovell Field, TN, Airports. This action corrects the name of the Birmingham Municipal Airport to Birmingham International Airport and modifies the Columbia Metropolitan, SC, airspace designation to reflect continuous operation and availability of services, therein. The effective hours of the Huntsville International-Carl T. Jones Field, AL, and Chattanooga Lovell Field, TN, Class C airspace areas are amended to coincide with the associated radar approach control facility's hours of operation. The designated boundaries and altitudes of these Class C airspace areas will not change. In addition, this docket establishes Class E airspace at Chattanooga Lovell Field, TN, and Huntsville International-Carl T. Jones Field, AL, Airports when the associated radar approach control facility is not in operation.

**EFFECTIVE DATE:** 0901 UTC, March 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

**SUPPLEMENTARY INFORMATION:**

### History

On January 6, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Birmingham Municipal, AL, Huntsville International-Carl T. Jones Field, AL, Columbia Metropolitan, SC, and Chattanooga Lovell Field, TN, Airports and establish Class E airspace areas at Chattanooga Lovell Field, TN, and Huntsville International-Carl T. Jones Field, AL, Airports (60 FR 2046).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C and E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace areas at Birmingham Municipal, AL, Huntsville International-Carl T. Jones Field, AL, Columbia Metropolitan, SC, and Chattanooga Lovell Field, TN, Airports. This action corrects the name of the Birmingham Municipal Airport to Birmingham International Airport and modifies the Columbia Metropolitan, SC, airspace designation to reflect continuous operation and availability of services therein. The effective hours of the Huntsville International-Carl T. Jones Field, AL, and Chattanooga Lovell Field, TN, Class C airspace areas are amended to coincide with the associated radar approach control facility's hours of operation. The designated boundaries and altitudes of these Class C airspace areas will not change. In addition, this docket establishes Class E airspace at Chattanooga Lovell Field, TN, and Huntsville International-Carl T. Jones Field, AL, Airports when the associated radar approach control facility is not in operation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 4000—Subpart C—Class C Airspace*

* * * * *

**ASO AL C Birmingham International Airport, AL (Revised)**

Birmingham International Airport, AL
(Lat. 33°33′50″ N., long. 86°45′16″ W.)

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Birmingham International Airport, and that airspace extending upward from 2,400 feet MSL to 4,600 feet MSL within a 10-mile radius of Birmingham International Airport from the 343° bearing from the airport clockwise to the 231° bearing from the airport, and that airspace extending upward from 1,900 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport from the 231° bearing from the airport clockwise to the 343° bearing from the airport.

* * * * *

**ASO AL C Huntsville International-Carl T. Jones Field, AL (Revised)**

Huntsville International-Carl T. Jones Field, AL
(Lat. 34°38′25″ N., long. 86°46′23″ W.)
Redstone Army Air Field
(Lat. 34°40′43″ N., long. 86°41′05″ W.)

That airspace within a 5-mile radius of the Huntsville International-Carl T. Jones Field extending upward from the surface to and including 4,600 feet MSL, excluding that airspace within a 1-mile radius of the Redstone Army Air Field; and that airspace within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 145° bearing from the airport extending upward from 2,400 feet MSL to and including 4,600 feet MSL; and that airspace within a 10-mile radius of the airport from the 145° bearing from the airport clockwise to the 015° bearing from the airport extending upward from 2,000 feet MSL to and including 4,600 feet MSL. All airspace contained within Restricted Areas R–2104A, R–2104B, and R–2104C is excluded from this Class C airspace area when they are active. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**ASO SC C Columbia Metropolitan Airport, SC (Revised)**

Columbia Metropolitan Airport, SC
(Lat. 33°56′26″ N., long. 81°07′09″ W.)
Columbia Owens Downtown Airport
(Lat. 33°58′15″ N., long. 80°59′44″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Columbia Metropolitan Airport excluding that airspace within a 2-mile radius of the Columbia Owens Downtown Airport; and that airspace extending upward from 2,000 feet MSL to 4,200 feet MSL within a 10-mile radius of the Columbia Metropolitan Airport from the 004° bearing from the airport clockwise to the 094° bearing from the airport, and that airspace extending upward from 1,800 feet MSL to 4,200 feet MSL within a 10-mile radius of the airport from the 094° bearing from the airport clockwise to the 004° bearing from the airport.

* * * * *

**ASO TN C Chattanooga, Lovell Field, TN (Revised)**

Chattanooga, Lovell Field, TN
(Lat. 35°02′07″ N., long. 85°12′14″ W.)

That airspace within a 5-mile radius of Lovell Field, extending upward from the surface to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport from the 350° bearing from the airport clockwise to the 058° bearing from the airport extending upward from 2,200 feet MSL to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport from the 058° bearing from the airport clockwise to the 234° bearing from the airport extending upward from 2,600 feet MSL to and including 4,700 feet MSL; and that airspace within a 10-mile radius of the airport from the 234° bearing from the airport clockwise to the 350° bearing from the airport extending upward from 3,300 feet MSL to and including 4,700 feet MSL. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002—Class—E Airspace Areas Designated as a Surface Area for an Airport*

* * * * *

**ASO AL E2 Huntsville, AL (New)**

Huntsville International-Carl T. Jones Field, AL
(Lat. 34°38′25″ N., long. 86°46′23″ W.)
Redstone Army Air Field
(Lat. 34°40′43″ N., long. 86°41′05″ W.)

Within a 5-mile radius of the Huntsville International-Carl T. Jones Field Airport, excluding that airspace within a 1-mile radius of the Redstone Army Air Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**ASO TN E2 Chattanooga, Lovell Field, TN (New)**

Chattanooga, Lovell Field, TN
(Lat. 35°02′07″ N., long. 85°12′14″ W.)

Within a 5-mile radius of Lovell Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on February 1, 1995.

**Nancy B. Kalinowski,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 95–3122 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–P

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## 14 CFR Part 71

**[Airspace Docket No. 94–AWA–9]**

## Modification of the Roanoke Regional/Woodrum Field, VA, and Rochester-Monroe County Airport, NY, Class C Airspace Areas and Establishment of the Roanoke Regional/Woodrum Field, VA, Class E Airspace Area

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the Class C airspace areas at Roanoke Regional/Woodrum Field, VA, and Rochester-Monroe County Airport, NY. The effective hours of the Roanoke Regional/Woodrum Field, VA, Class C airspace area will coincide with the associated radar approach control facility's hours of operation. This action changes the name of the Rochester-Monroe County Airport, NY, to Greater Rochester International Airport, NY. This rule will not change the designated boundaries or altitudes of these Class C airspace areas. Class C airspace areas are predicated on an operational air traffic control tower serviced by a radar approach control facility. In addition, this action establishes Class E airspace at Roanoke Regional/Woodrum Field, VA, when the associated radar approach control facility is not in operation.

**EFFECTIVE DATE:** 0901 UTC, March 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** William C. Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9295.

**SUPPLEMENTARY INFORMATION:**

## History

On January 13, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Roanoke Regional/Woodrum Field, VA, and Rochester-Monroe County Airport, NY, and to establish a Class E airspace area at Roanoke Regional/Woodrum Field, VA (60 FR 3018).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C and E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document will be published subsequently in the Order.

## The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Roanoke Regional/Woodrum Field, VA, Class C airspace area by amending the effective hours to coincide with the associated radar approach control facility's hours of operation and by changing the name of the Rochester-Monroe County Airport to Greater Rochester International Airport. This action will not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this action establishes the Roanoke Regional/Woodrum Field, VA, Class E airspace area when the associated radar approach control facility is not in operation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 4000—Subpart C-Class C Airspace*

* * * * *

**AEA NY C Greater Rochester International Airport, NY (Revised)**

Greater Rochester International Airport, NY
(Lat. 43°07′08″ N., long. 77°40′21″ W.)

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Greater Rochester International Airport; and that airspace extending upward from 2,100 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport.

* * * * *

**AEA VA C Roanoke Regional/Woodrum Field, VA (Revised)**

Roanoke Regional/Woodrum Field, VA
(Lat. 37°19′31″ N., long. 79°58′31″ W.)

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Roanoke Regional/Woodrum Field; and that airspace extending upward from 3,800 feet MSL to and including 5,200 feet MSL within a 10-mile radius of the airport from the 004° bearing from the airport clockwise to the 104° bearing from the airport; and that airspace extending upward from 3,400 feet MSL to and including 5,200 feet MSL from the 104° bearing from the airport clockwise to a line formed by a point at the 274° bearing from the airport at 5 miles direct to a point at the 257° bearing from the airport at 10 miles. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002—Class E Airspace Areas Designated as a Surface Area for an Airport*

* * * * *

**AEA VA E2 Roanoke Regional/Woodrum Field, VA (New)**

Roanoke Regional/Woodrum Field, VA
(Lat. 37°19′31″ N., long. 79°58′31″ W.)

Within a 5-mile radius of the Roanoke Regional/Woodrum Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Washington, DC, on February 1, 1995.

**Nancy B. Kalinowski,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 95–3120 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF STATE

## Bureau of Consular Affairs

## 22 CFR Part 43

**[Public Notice 2163]**

## Visas: Documentation of Immigrants Under Section 132 of Public Law 101–649, as Amended

**AGENCY:** Bureau of Consular Affairs, Department of State.

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

**SUMMARY:** Pub. L. 103–416, the Act of October 25, 1994, the Immigration and Nationality Technical Corrections Act of 1994, further amends section 132 of Public Law 101–649 to authorize the issuance during Fiscal Year 1995 of those immigrant visas authorized during the three fiscal years of the Transitional Diversity Program but not used during that period. The amendments became effective upon signature and the available visas are to be issued during the Fiscal Year now in progress. Accordingly, the Department is promulgating an interim rule in order to create a basis for initiating the necessary processing and inviting comments.

**DATES:** This rule is effective February 8, 1995. Interested persons are invited to

submit written comments on or before March 10, 1995.

**ADDRESSES:** Written comments, with a reference to this rule to ensure proper and timely handling, may be submitted in duplicate to the Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC, 20522–0113.

**FOR FURTHER INFORMATION CONTACT:** Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, (202) 663–1184.

**SUPPLEMENTARY INFORMATION:**

## General

Section 217 of Pub. L. 103–416 amends section 132 of Pub. L. 101–649 to extend the life of the provision through fiscal year 1995. Section 132 provided for the issuance of specified amounts of immigrant visas during fiscal years 1992, 1993, and 1994. This program came to be known as the AA–1 program, from the entry code used by INS to identify for statistical purposes admissions of aliens who qualified under the program. Natives of specified countries were authorized to compete for consideration during each of the three years by applying during an application period established for each of the years. The annual limitation was set at 40,000 with not less than 40%—16,000—reserved for natives of Ireland.

Section 132 was amended to modify the provision in several respects for the second and third years. Pertinent here were amendments which authorized the total of visas unused in the first or second fiscal year to be added to the total for the second or third year, as applicable, and which authorized the total reserved for natives of Ireland to be increased in the second and third years by the shortfall in usage by natives of Ireland in the preceding year.

Section 217 of Pub. L. 103–416 further extends this program but does so in a very limited way. First, the numerical limitation for fiscal year 1995 is established as solely the total of immigrant visas unused in the program during fiscal year 1994. *There is no new annual limitation of 40,000.*

Second, aliens entitled to compete for the available visas will be limited to those who are natives of countries qualified under this program who also have applied for consideration under the new Diversity Lottery provided for in section 203(c) of the Immigration and Nationality Act, as amended, and in section 42.33 of Title 22, United States Code. *There will be no new mail-in period to allow aliens to apply to compete for the visas available under this extension.*

Finally, aliens entitled to compete for the AA–1 program numbers available during fiscal year 1995 will not have to present evidence of a firm commitment for employment in the U.S., but will be subject to the requirement established by section 203(c)(2) for applicants under the Diversity Lottery—a showing that they have at least a high school education or its equivalent or that, within the preceding five years, they have had at least two years of work experience in an occupation requiring at least two years of training or experience.

## Numerical Limitation and Its Apportionment

As pointed out above, the numerical limitation for fiscal year 1995 is limited to the number of immigrant visas which were available during the previous fiscal years but not used during those years. The total unused was 1,404. Thus, during fiscal year 1995 1,404 visas will be available to natives of qualifying countries.

Now, the apportionment of that total is interesting. Section 132(c) specifies that a minimum of 40 percent of a fiscal year limitation shall be made available to natives of the foreign state which received the greatest number of visas under the program established by section 314 of the Immigration Reform and Control Act. That same section, as amended, also provides that, if usage of visas by natives of that foreign state falls short of the total available in a fiscal year, the amount of shortfall is to be added to the 40 percent minimum during the next fiscal year.

The foreign state so described was Ireland. Application of the above rules to the available numbers produces the following results—

40 percent of 1404=562 (rounded to the nearest whole number)
Visas reserved for natives of Ireland, FY 94—22,555
Visas actually used by natives of Ireland, FY 94—21,804
Shortfall for FY 94—751
Visas available for natives of Ireland, FY 95—562+751=1,313
Visas available for natives of other qualifying countries—91.

Section 217 also provides that any visas available to natives of countries other than Ireland are to be distributed among the regions established under the Diversity Lottery in proportion to the usage by region of visas under the AA–1 program during fiscal years 1992 and 1993. Regionally, the usage during the two fiscal years cited was distributed as follows:

Europe—85.93%
Asia—11.51%
South America, Mexico, Central America, and the Caribbean—2.02%
Africa—0.54%

It will be noted that two of the six regions established for Diversity Lottery purposes are not listed above—North America and Oceania. No countries in the Oceania region qualified for participation in the AA–1 program and, thus, usage of visas by natives of countries in that region was necessarily zero.

The omission of North America has a different basis. The only two countries in the region are Canada and the Bahamas. Canada was a country which qualified for the AA–1 program in fiscal year 1993, although not in fiscal year 1992. On the other hand, Canada does not qualify for participation in the DV–1 lottery and, thus, the Bahamas is the only country in the North America Region which does qualify. The Bahamas was not, however, a country which qualified to participate in the AA–1 program. For this reason, natives of the Bahamas who applied for the DV–1 lottery could not be issued AA–1 visas under this carry-over provision. Accordingly, the Department did not take into account usage by North America in determining how to apportion the 91 visas available for natives of AA–1 countries other than Ireland.

Apportioning the 91 visas among the four regions in accordance with the percentages indicated above produces the following numbers—

Europe—78
Asia—10
South America, Mexico, Central America, and the Caribbean—2
Africa—1

## Selection of Immigrants

Small as the numbers of visas available under this provision are, the question of how to select recipients has been troublesome. Section 217 itself prohibits any separate mail-in to compete for these visas and requires that recipients be selected from among those who applied to compete for selection in the fiscal year 1995 Diversity Lottery. By the time section 217 was enacted, the mail-in period for that lottery was complete, the computer-generated random selection had been made and notifications had been sent to the winners. The Department's decision as to how to handle selection of the recipients of these visas has been heavily influenced by that fact.

First, as to non-Irish competitors for these visas, the number of registrants for

the Diversity Lottery is so large compared to the visas available that it will not be necessary to go beyond those already registered and notified of their qualification to compete in the Diversity Lottery. The Department envisions that the visas available for each region will be made available according to regional rank order numbers to natives of AA–1 qualifying countries who are determined to be ineligible to receive a DV–1 visa under section 212(a)(6)(C) or 212(e), or who could not obtain a DV–1 visa because of the regional or percentage limitation.

The situation regarding Irish Diversity Lottery applicants is rather different. The number of aliens registered for the Diversity Lottery who could compete for the 1,313 Irish visas is only 2,416—2,151 from the Republic of Ireland; 265 from Northern Ireland. [In the AA–1 program, Northern Ireland was required by law to be treated as part of Ireland. In the Diversity Program, Northern Ireland is required by law to be treated as a separate foreign state.] Given the very high percentage of natives of Ireland who were registered for visas under the AA–1 program but failed to pursue their applications, the Department believes that it is necessary to register additional Irish applicants beyond those registered for the DV–1 program for the express purpose of producing a pool of Irish applicants sufficient to ensure use of all the AA–1 visa numbers carried over from the previous fiscal years.

Accordingly, the Department is registering an additional quantity of natives of Ireland beyond those registered for competition for the Diversity visas. These applicants will not compete for Diversity visas as their rank order numbers will not justify permitting them to do so. They will, however, compete for the 1,313 AA–1 visas carried over to the current fiscal year.

## Interim Rule

The implementation of this rule, with provision for post-promulgation public comments, is based upon the ''good cause'' exception found at 5 U.S.C. 553 (b)(B) and 553(d)(3). The amendments authorizing the Department to continue issuing visas under the Transitional Diversity Program throughout fiscal year 1995 took effect October 25, 1994.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

## List of Subjects in 22 CFR Part 43

Aliens, Immigrants, Numerical limitations, Registration, Visas.

Accordingly, title 22, part 43 of the Code of Federal Regulations, is amended as follows:

## PART 43—[AMENDED]

1. The authority citation for part 43 is revised to read:

**Authority:** 8 U.S.C. 1104; 8 U.S.C. 1153 note, 108 Stat. 4315.

2. Part 43 is amended by adding a new subpart C to read as follows:

### Subpart C—Documentation of Immigrants Under Section 217 of Public Law 103–416

Sec.
43.21 General.
43.22 Definitions.
43.23 Eligibility for consideration.
43.24 Order of consideration.
43.25 Numerical limitations.
43.26 Fees.
43.27 Eligibility to receive a visa.

### § 43.21 General.

Except as specifically provided in this subpart, the provisions of the Immigration and Nationality Act, as amended, and of parts 40 and 42 of this chapter shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 217 of Pub. L. 103–416.

### § 43.22 Definitions.

The definitions set forth in paragraphs (a), (c) and (d) of § 43.12 shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 217 of Pub. L. 103–416.

### § 43.23 Eligibility for consideration.

(a) *Natives of adversely affected foreign states other than Ireland.* Natives of adversely affected foreign states other than Ireland shall be eligible for consideration for issuance of a visa under this subpart only if they have been registered for consideration for issuance of a visa during fiscal year 1995 under section 203(c) of the Immigration and Nationality Act, as amended.

(b) *Natives of Ireland.* Natives of Ireland, as that country is defined in § 43.12(d) shall be eligible for consideration for issuance of a visa under this 103–416.

(1) They have been registered for consideration for issuance of a visa under section 203(c) of the Immigration and Nationality Act, as amended; or

(2) They have been separately registered for this purpose from among those natives of Ireland who petitioned for consideration under section 203(c) of the Immigration and Nationality Act, as amended, but were not selected under the procedures established under § 42.33.

### § 43.24 Order of consideration.

(a) *Natives of Ireland.* Consideration for issuance of a visa under this subpart shall be given to natives of Ireland in order of diversity rank number whose application for a visa under section 203(c) of the Immigration and Nationality Act, as amended, has been refused under section 212(a)(6)(C) or 212(e) of such Act, or both, or whose application could not be processed to a conclusion because of the applicable regional or foreign state limitation. Such consideration shall thereafter be given to natives of Ireland separately registered for this purpose as provided in § 43.23(b)(2) and such consideration shall be given in the rank order established by such registration.

(b) *Natives of adversely affected countries other than Ireland.* Consideration for issuance of a visa under this subpart shall be given to natives of adversely affected countries other than Ireland in order of regional diversity rank number whose application for a visa under section 203(c) of the Immigration and Nationality Act, as amended, has been refused under section 212(a)(6)(C) or 212(e) of such Act, or both, or whose application registered for consideration for issuance of a visa under such section 203(c) could not be processed to a conclusion because of the applicable regional or foreign state limitation.

### § 43.25. Numerical limitations.

(a) *Centralized control.* Centralized control of the numerical limitations established pursuant to section 217 of Pub. L. 103–416 and this subpart is established in the Department.

(b) *Numerical limitation for natives of Ireland.* The numerical limitation for natives of Ireland shall be determined by multiplying by 0.40 the number of immigrant visas available under section 132 of Pub. L. 101–649 during fiscal year 1994 to natives of adversely affected countries which were not used by such natives and by adding to the result of that calculation the number of visas available under such section 132 during fiscal year 1994 to natives of Ireland which were not used by such natives.

(c) *Numerical limitation for natives of adversely affected countries other than Ireland.*

(1) *Overall.* The overall numerical limitation for natives of adversely affected countries other than Ireland shall be the difference between the total number of visas available under section 132 of Pub. L. 101–649 during fiscal year 1994 but not used during such fiscal year and the number computed pursuant to paragraph (b) of this section.

(2) *Regional apportionment.* The overall numerical limitation determined as provided in paragraph (c)(1) of this section shall be apportioned among the regions established by section 203(c)(1)(F) of the Immigration and Nationality Act, as amended, as follows—Africa: 0.54%; Asia: 11.51%; Europe: 85.93%; North America—none; Oceania: None; and South America, Mexico, Central America, and the Caribbean; 2.02%.

(d) *Allocation of immigrant visa numbers.* Within the limitations specified in paragraphs (b) and (c) of this section, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status.

**§ 43.26 Fees.**

An applicant who is to be given consideration under this subpart and who is notified or otherwise informed thereof shall remit to the Department a fee of $25 in such manner as the Department shall specify in the notification or other communication to the applicant. The fee shall be $25 regardless of whether or not the applicant has a spouse and/or child(ren) who intend to accompany or follow to join the applicant. The remittance shall be negotiable in such form as the Department shall specify.

**§ 43.27 Eligibility to receive a visa.**

The eligibility of an applicant for a visa under section 217 of Pub. L 103–416 shall be determined as provided in the Immigration and Nationality Act, as amended, and parts 40 and 42 of subchapter E-Visas except that—

(a) Section 212(e) of the Immigration and Nationality Act, as amended, shall not apply to such an applicant; and

(b) The provisions of § 40.105 of this chapter shall apply to such an applicant.

Dated: February 2, 1995.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 95–3004 Filed 2–7–95; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF JUSTICE

## Office of the Attorney General

## 28 CFR Part 64

**[AG Order No. 1947–95]**

## Designation of Officers and Employees of the United States for Coverage Under Section 1114 of Title 18 of the United States Code

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Part 64 of title 28, Code of Federal Regulations, designates categories of federal officers and employees who, in addition to those already designated by statute, warrant the protective coverage of federal criminal law. This designation confers federal jurisdiction to prosecute the killing, attempted killing, kidnaping, forcible assault, intimidation or interference with any of the federal officers or employees designated by this regulation while they are engaged in or on account of the performance of their official duties. This order adds to the list of covered federal officers and employees federal administrative law judges not previously covered and employees of the Office of Workers' Compensation Programs of the Department of Labor who adjudicate and administer claims under the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act and its extension, and the Black Lung Benefits Act. The order also makes technical corrections and deletes duplicative designations.

**DATES:** This final rule is effective February 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Incontro, Deputy Chief, or Stephen M. Weglian, Attorney, Terrorism and Violent Crime Section, Criminal Division, Department of Justice, Washington, D.C. 20530, telephone (202) 514–0849.

**SUPPLEMENTARY INFORMATION:** Part K of chapter X of the Comprehensive Crime Control Act of 1984, Pub. L. 98–473, title II, § 1012, 98 Stat. 1976, 2142 (1984), amended 18 U.S.C. 1114, which prohibits the killing of designated federal employees, to authorize the Attorney General to add by regulation other federal personnel who will be protected by this section. The categories of federal officers and employees covered by section 1114 are also protected, while engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnaping, 18 U.S.C. 1201(a)(5); forcible assault, interference, or intimidation, 18 U.S.C. 111; and threat of assault, kidnap or murder with intent to impede, intimidate, or retaliate against such officer or employee, 18 U.S.C. 115.

In order to implement this legislation initially, the Department conducted a survey of all federal agencies to determine which federal employees, other than those already listed in 18 U.S.C. 1114, should be protected under the statute. The result of this survey was the promulgation of Attorney General Order No. 1177–87, 52 FR 4767, February 17, 1987, creating 28 CFR part 64. Section 64.1 states the purpose of the regulation. Section 64.2 originally listed 21 categories of federal employees who were considered appropriate for coverage under section 1114 and the other statutory provisions. Consistent with the purpose and legislative history of section 1114, these categories of federal employees were selected because their jobs involve inspection, investigative or other law enforcement responsibility or their work involves a substantial degree of physical danger from the public and may not be adequately addressed by available state or local law enforcement resources. Part 64 has been amended four times to add additional categories of personnel (Attorney General Order No. 1326–89, 54 FR 9043, March 3, 1989; Attorney General Order No. 1394–90, 55 FR 3945, February 6, 1990; Attorney General Order No. 1508–91, 56 FR 32327, July 16, 1991; Attorney General Order No. 1636–92, 57 FR 56444, November 30, 1992).

Attorney General Order No. 1636–92 established an interim rule that, besides making various technical modifications to Part 64, added these categories of employees: (1) attorneys and employees assigned to perform or to assist in performing, investigative, inspection or audit functions of the Office of the Inspector General of certain designated Federal entities as that term is defined by section 8E of the Inspector General Act of 1978, as amended, 5 U.S.C. App 3 section 8E, and of the Merit Systems Protection Board and the Selective Service System; (2) attorneys, accountants, investigators, administrative judges and other employees of the U.S. Securities and Exchange Commission assigned to perform or to assist in performing investigative, inspection or other law enforcement functions; (3) biologists and technicians of the U.S. Fish and Wildlife Service who are participating in sea lamprey control operations; (4) officers and employees of the Federal Aviation Administration, the Federal

Highway Administration, the Federal Railroad Administration, the Research and Special Programs Administration, and the Saint Lawrence Seaway Development Corporation of the U.S. Department of Transportation who are assigned to perform or assist in performing investigative, inspection or law enforcement functions; and (5) U.S. Trustees and Assistant U.S. Trustees, and bankruptcy analysts and other officers and employees of the U.S. Trustee System who have contact with creditors and debtors, perform audit functions, or perform other investigative or enforcement functions in administering the bankruptcy laws. No public comments were received.

Administrative law judges (ALJs) perform law enforcement functions under various federal laws. In recent years ALJs have been recipients of an increasing number of threats, often by litigants in proceedings before ALJs who have considerable property interests at stake. Presently, there are over 1000 ALJs in nearly 30 federal agencies. Some of the ALJs in the Social Security Administration and the Securities and Exchange Commission are currently covered by § 64.2 (x) and (w), respectively. While these ALJs comprise nearly 70% of all federal ALJs, there is no valid reason for not covering the others who experience similar risks. Accordingly, all administrative law judges have been added by paragraph (aa) of § 64.2.

The Office of Workers' Compensation Programs (OWCP) of the Department of Labor administers three workers' compensation laws: the Federal Employees' Compensation Act (FECA); the Longshore and Harbor Workers' Compensation Act (LHWCA) and its extension; and the Black Lung Benefits Act (BLBA). OWCP employees adjudicate and administer claims which result in the payment (or denial) of benefits under these respective laws. As part of this process, the employees conduct informal conferences and (under FECA) face-to-face hearings. The individual claims examiner's identity is well known to claimants, as are the supervisors and managers involved at all levels of the program. These employees' jobs involve a substantial risk of physical danger from some claimants and other members of the public who seek to influence the outcome of the claim or who are dissatisfied with the decisions rendered. In recent years, an increased number of threats and acts of violence have been directed against OWCP employees. There have been instances in which individuals have appeared in OWCP offices with vicious dogs, with purported explosives strapped to them, and with firearms and other dangerous weapons. Accordingly, these OWCP employees have been added by paragraph (bb) of § 64.2.

Because of new paragraph (aa), reference to ''administrative judges'' in paragraph (w) has been deleted. Also, because section 6 of Pub. L. 102–365, 106 Stat. 975, September 3, 1992, added to section 1114 of title 18, U.S.C., ''any officer or employee of the Federal Railroad Administration assigned to perform investigative inspection or law enforcement functions,'' reference to the Federal Railroad Administration has been deleted from paragraph (z).

On May 18, 1994, an interim rule with request for comments was published in the **Federal Register** amending part 64 of title 28, Code of Federal Regulations. Attorney General Order No. 1874–94, 59 FR 25815. One favorable comment was received. The Department has determined to issue the rule in final form without revision to the interim rule.

The Department of Justice has determined that this is not a ''significant regulatory action'' within the meaning of Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This order will not have a substantial impact on a significant number of small entities, thus a regulatory flexibility analysis has not been prepared pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. Finally, this order does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

Accordingly, the interim rule amending 28 CFR part 64 which was published at 59 FR 25815 on May 18, 1994, is adopted as a final rule without change.

Dated: January 31, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95–3058 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**[Docket No. S–048]**

### Logging Operations

**AGENCY:** Occupational Safety and Health Administration (OSHA).

**ACTION:** Final rule; partial stay of enforcement.

**SUMMARY:** On October 12, 1994, the Occupational Safety and Health Administration (OSHA) issued a new standard for logging operations (59 FR 51672). This notice stays enforcement of the following paragraphs of § 1910.266 until August 9, 1995: (d)(1)(v) insofar as it requires foot protection to be chain-saw resistant; (d)(1)(vii) insofar as it requires face protection; (d)(2)(iii) for first-aid kits that contain all the items listed in Appendix A; (f)(2)(iv); (f)(2)(xi); (f)(3)(ii); (f)(3)(vii); (f)(3)(viii); (f)(7)(ii) insofar as it requires that parking brakes be able to stop the machine; (g)(1) and (g)(2) insofar as they require inspection and maintenance of employee-owned vehicles; and (h)(2)(vii) insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

**DATES:** Effective on February 9, 1995. The partial stay will expires on August 9, 1995. The remaining requirements of § 1910.266 are unaffected by this document and will go into effect as scheduled on February 9, 1995, or as otherwise provided in the Final Rule.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

**SUPPLEMENTARY INFORMATION:** On October 12, 1994, OSHA issued a final rule governing worker safety in logging operations. Among other things, this rule included requirements for: personal protective equipment; first aid kits at logging work sites; machine stability and slope limitations; discharge of hydraulic and pneumatic storage devices on forestry machines; protective structures on machines; machine braking systems; vehicle inspection and maintenance; and tree harvesting. Several parties have raised questions about certain aspects of these requirements. After considering their questions, the Agency has determined that a six-month delay in the effective date of some of the provisions is appropriate in order to allow time for it to clarify language in the regulatory text so that it most adequately expresses its intent with respect to some of these provisions, and to provide additional information on other provisions.

### Stay of Enforcement of Certain Provisions of § 1910.266

*Paragraph (d)(1)(v)—Foot protection.* The final logging standard requires

employees to wear foot protection, such as heavy-duty logging boots, that among other things, protect against ''penetration by chain saws.'' Some interested persons have misinterpreted this provision to require steel-toed boots, although the preamble to the final rule explained that the rule does not require steel-toed boots.

OSHA has decided to grant a six-month delay in the effective date of the portion of this provision that requires that foot protection be chain-saw resistant. (The remaining requirements of the foot protection provision will go into effect as scheduled on February 9.) This delay will enable OSHA to review the logging community requirements on available foot protection, including many types of heavy-duty leather logging boots currently used, kevlar boots, and foot coverings that provide adequate chain saw resistance. Finally, this delay will allow greater availability of new products that manufacturers are developing in response to the standard.

*Paragraph (d)(1)(vii)—Eye and face protection.* The logging standard requires loggers to wear eye and face protection meeting the requirements of OSHA's general personal protection equipment (PPE) standards when there is a potential for injury due to falling or flying objects. Some interested persons have interpreted this provision to require both eye and face protection in all cases.

OSHA has decided to grant a six-month delay in the effective date of this provision to the extent that it requires *face* protection. (The current effective date of February 9 will continue to apply to the eye protection requirement.) The delay will allow OSHA to clarify what the standard requires, and to better inform employers about available face protection that does not limit worker vision.

*Paragraph (d)(2)(iii)—Annual approval of first-aid kits by a health care provider.* Paragraph (d)(2) states that employers mut provide and maintain adequate first-aid kits at each worksite, and that the number and contents of the kits must be reviewed annually by a health care provider. Some interested persons have interpreted the standard to require that a doctor inspect each kit annually.

OSHA has decided to grant a six-month delay in the effective date of the provision requiring annual health care provider review. The requirement that first-aid kits contain at least the items listed in Appendix A (paragraph (d)(2)(ii)) will go into effect as scheduled on February 9, 1995. During this period, OSHA will revise the statutory language to clarify its original intent.

*Paragraph (f)(2)(iv)—Slope limitations on machine operation.* This rule states that logging machines shall not be operated on any slope greater than the maximum slope recommended by the manufacturer. Some parties have interpreted this provision to require manufacturers to specify maximum slopes that would be applicable in all field situations. OSHA is granting a six-month stay of this provision to clarify this point.

*Paragraph (f)(2)(xi)—Discharge of stored energy from machine hydraulic and pneumatic storage devices.* This provision requires that pressure or stored energy from hydraulic and pneumatic storage devices be discharged after the machine engine is shut down. Some parties have interpreted this provision to require discharge of air and water from all machine components, even when the presence of air or water pressure will not create a hazard for any employee. OSHA is granting a six-month delay in order to clarify this point.

*Paragraph (f)(3)(ii)—Machine rollover protective structures.* The final rule requires that all rollover protective structures (ROPS) be installed, tested and maintained in accordance with the Society of Automotive Engineers (SAE) J1040, April 1988, performance criteria for rollover protective structures (ROPS). OSHA has learned that some logging equipment currently in production has not yet been designed to meet the 1988 SAE criteria document. OSHA has decided to delay the effective date of this requirement for six-months in order to determine whether any additional extension may be appropriate.

*Paragraph (f)(3) (vii) and (viii)—Machine operator cab protective structures.* These provisions require that the lower portion of the operator's cab be enclosed with ''solid'' material that will prevent objects from entering the cab. Some parties have interpreted this provision to encourage the use of materials like steel plating that may restrict the operator's field of vision. OSHA is granting a six-month delay in the effective date of this provision in order to clarify this requirement.

*Paragraph (f)(7)(ii)—Machine braking systems.* This provision requires that each machine be equipped with ''a secondary braking system, such as an emergency brake or a parking brake, which shall be effective in stopping the machine and maintaining parking performance.'' OSHA has since learned that the terminology used in this provision is inconsistent with that used by some manufacturers. These manufacturers consider a secondary braking system to be a subsystem of the service brake system and that each subsystem should be capable of stopping the machine even though the other subsystem fails. The parking brake system is not designed to stop the vehicle in motion but rather to restrain it once movement has stopped; thus it is not considered a secondary system.

OSHA is granting a six-month delay in this provision only to the extent that it requires that parking brakes be able to stop the machine. During this period, employers must still assure that each machine has a service brake system that is capable of stopping the machine and a parking brake system that can hold the machine and its maximum load on any slope that the machine is operated. OSHA will revise the terminology in this provision to clarify its intent.

*Paragraph (g) (1) and (2)—Inspection and maintenance of employee-owned vehicles.* These provisions require that any vehicle used off public roads at logging work sites or to perform any logging operation, including employee-owned vehicles, be maintained in a serviceable condition. Some parties have interpreted this provision to require logging employers to inspect and maintain all vehicles, including those employee-owned vehicles that they allow on their logging sites.

OSHA is granting a six-month delay in the effective date of these provisions insofar as they apply to employee-owned vehicles. The additional time will enable OSHA to reexamine the record on this issue and clarify its intent of the standard.

*Paragraph (h)(2)(vii)—Backcuts.* This rule requires that backcuts be *above* the horizontal line of the undercut. OSHA is aware that when loggers use the Humboldt cutting method, in which the diagonal cut is below the horizontal cut of the undercut, the backcut is *at* the level of the horizontal cut. The Agency is granting a six-month delay in the effective date of this provision only to the extent that the rule does not permit loggers using the Humboldt method to place the backcut at the level of the horizontal cut. (OSHA emphasizes that backcuts may never be made below the horizontal cut.) OSHA will reexamine the record on this issue.

## III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The actions in this document are taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911.

Signed at Washington, DC., this 2nd day of February, 1995.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

For the reasons set forth above, 29 CFR part 1910 is hereby amended as follows:

## PART 1910—[AMENDED]

1. The Authority citation for subpart R of 29 CFR part 1910 continues to read as follows:

**Authority:** Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.272, 1910.274, and 1910.275 also issued under 29 CFR part 1911.

Section 1910.272 also issued under 5 U.S.C. 553.

2. A note is added at the end of § 1910.266, to read as follows:

### § 1910.266 Logging operations.

* * * * *

**Note:** In the **Federal Register** of February 8, 1995, OSHA stayed the following paragraphs of § 1910.266 from February 9, 1995 until August 9, 1995:

1. (d)(1)(v) insofar as it requires foot protection to be chain-saw resistant.
2. (d)(1)(vii) insofar as it requires face protection.
3. (d)(2)(iii).
4. (f)(2)(iv).
5. (f)(2)(xi).
6. (f)(3)(ii).
7. (f)(3)(vii).
8. (f)(3)(viii).
9. (f)(7)(ii) insofar as it requires that parking brakes be able to stop the machine.
10. (g)(1) and (g)(2) insofar as they require inspection and maintenance of employee-owned vehicles.
11. (h)(2)(vii) insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

[FR Doc. 95–3041 Filed 2–7–95; 8:45 am]

BILLING CODE 4510–26–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 51 and 93

**[FRL–5149–8]**

## Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

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

**ACTION:** Interim final rule.

**SUMMARY:** This action aligns the timing of certain transportation conformity consequences with the imposition of Clean Air Act highway sanctions for a six-month period. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan, and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program will not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allows States more time to prevent the lapse by submitting complete control strategy implementation plans. EPA is issuing this interim final rule, effective for a six-month period, without prior proposal in order to prevent previously unforeseeable delays in State ozone implementation plan development from causing widespread conformity lapsing. In a parallel action in this **Federal Register**, EPA is requesting comment on this interim final rule and on similar but permanent rule changes.

**EFFECTIVE DATE:** This interim final rule is effective on February 8, 1995 until August 8, 1995.

**ADDRESSES:** Materials relevant to this rulemaking are contained in Docket No. A–95–02. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668–4441.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Transportation Conformity Rule*

The final transportation conformity rule, ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act,'' was published November 24, 1993 (58 FR 62188) and amended 40 CFR parts 51 and 93. The Notice of Proposed Rulemaking was published on January 11, 1993 (58 FR 3768).

Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining the national ambient air quality standards.

The final transportation conformity rule requires that conformity determinations use the motor vehicle emissions budget(s) in a submitted ''control strategy'' SIP (defined below), and the rule includes special provisions to address failures in control strategy SIP development. These failures include failure to submit a control strategy SIP, submission of an incomplete control strategy SIP, or disapproval of a control strategy SIP. Specifically, according to 40 CFR 51.448 (and 40 CFR 93.128), following these SIP development failures, no new or amended transportation plans or transportation improvement programs (TIPs) may be found to conform to the SIP after a certain grace period (i.e., the existing transportation plan and TIP are ''frozen''), and eventually, the conformity status of the existing transportation plan and TIP lapses.

When the conformity status of the transportation plan and TIP lapses, no new project-level conformity determinations may be made, and the only federal highway and transit projects which may proceed are exempt or grandfathered projects. Non-federal

highway or transit projects may be adopted or approved by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act only if they are not regionally significant.

As described in the preamble to the final transportation conformity rule (58 FR 62191–3), EPA developed these requirements in response to public comments which claimed that the proposed interim period conformity criteria (e.g., the ''build/no-build test'') did not ensure emissions reductions consistent with Clean Air Act requirements for reasonable further progress and attainment, and which emphasized the importance of emissions budgets in determining conformity. EPA imposed restrictions such as conformity lapsing where the State failed to establish emission budgets in a timely fashion, because EPA believed that in the prolonged absence of a control strategy SIP, preventing new conformity determinations and postponing new commitments of funds would prevent uncontrolled emissions increases while the State was establishing its control strategies.

*B. Control Strategy SIP Requirements*

Control strategy SIPs include 15% rate-of-progress plans, reasonable further progress plans, and attainment demonstrations.

Clean Air Act section 182(b)(1) required moderate and above ozone nonattainment areas to submit a 15% volatile organic compound emission reduction rate-of-progress plan by November 15, 1993. Moderate ozone areas were also required by that section to submit an attainment demonstration by this date if they were not using photochemical grid modeling to develop the demonstration.

Serious and above ozone nonattainment areas (and moderate ozone nonattainment areas using photochemical grid modeling under EPA's interpretation of section 182(b)(1)) were required to submit an attainment demonstration by November 15, 1994 under Clean Air Act section 182(c)(2)(A). Clean Air Act section 182(c)(2)(B) also required serious and above ozone nonattainment areas to submit by this date a reasonable-further-progress (or rate-of-progress) plan for 3% annual emission reductions until the attainment date.

Carbon monoxide (CO) nonattainment areas classified as moderate with design value greater than 12.7 parts per million or serious were required by Clean Air Act section 187(a)(7) to submit an attainment demonstration by November 15, 1992.

Areas in nonattainment for particulate matter less than a nominal 10 microns in aerodynamic diameter (PM–10) were required to submit an attainment demonstration at varying dates depending upon their date of classification, but Clean Air Act section 189(a)(1)(B) required many areas to submit the attainment demonstration by November 15, 1991.

Nitrogen dioxide ($NO_2$) areas were required by Clean Air Act section 191 to submit an attainment demonstration by May 15, 1992.

## II. Description of Interim Final Rule

*A. Incomplete 15% SIPs and Disapprovals With Protective Findings*

This interim final rule delays the lapse in transportation plan/TIP conformity until Clean Air Act section 179(b) highway sanctions are effective, for areas with a 15% SIP which EPA found incomplete but noted in the finding (according to 40 CFR 51.448(c)(1)(iii)) that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A) (i.e., incomplete with a ''protective finding''). EPA is also similarly delaying the conformity lapse which results from EPA disapproval of a control strategy SIP with a ''protective finding'' as described in 40 CFR 51.448(a)(3) and (d)(3). Clean Air Act highway sanctions will become effective in both types of areas two years following the date of EPA's incompleteness determination or disapproval, unless the State remedies the failure.

Under the November 1993 transportation conformity rule, the conformity status of the transportation plan and TIP lapses in such areas twelve months following the incompleteness determination or disapproval, unless another SIP is submitted to EPA and found to be complete. This interim final rule delays the transportation plan/TIP conformity lapse. It also restores the conformity status of transportation plans and TIPs for which twelve months have already elapsed since EPA made the incompleteness determination or disapproval with protective finding, provided conformity has not lapsed for other reasons under the transportation conformity rule. A list of areas with incomplete 15% SIPs with protective findings (and the dates of those EPA findings) is in the docket.

EPA is delaying the transportation plan/TIP conformity lapse in these areas because the agency now believes that a twelve-month period to make these control strategy SIPs fully enforceable is a too stringent definition of ''timely'' SIP development in this particular context, given the lengthy legislative and administrative processes of many States. Although EPA believed this time period was appropriate at the time EPA promulgated the transportation conformity rule, EPA has now seen that in practice the time was too short to be reasonable for purposes of determining when transportation plans and TIPs should lapse following SIP development failures.

EPA believes it is appropriate to allow States more time to complete these SIPs before negative conformity consequences are imposed, particularly because in these areas with incompleteness findings or disapprovals with protective findings, the State has developed motor vehicle emissions budget(s) which are part of an overall strategy to achieve the required emission reductions and therefore are appropriate for use in conformity determinations. In these areas, lapsing is not necessary in the short term to prevent uncontrolled motor vehicle emissions increases while the State completes the SIP, because the motor vehicle emissions budget(s) are already applying in conformity determinations as a constraint.

However, EPA continues to believe that a conformity lapse is appropriate in the prolonged absence of a complete control strategy SIP. In such cases, EPA can no longer remain confident that states will be able to adopt and implement the rules necessary to support the SIP emissions budget. EPA believes that the application of Clean Air Act highway sanctions signifies that SIP development has not proceeded in a timely fashion and, therefore, that the conformity process should ensure that significant new transportation projects will not be undertaken.

*B. Ozone Attainment/3% Rate-of-Progress SIPs*

For ozone nonattainment areas which fail to submit an attainment SIP due November 15, 1994 (including moderate areas using photochemical grid modeling) and/or a 3% rate-of-progress SIP revision (hereafter called an ''attainment/3% rate-of-progress SIP''), this interim final rule similarly delays the transportation plan/TIP conformity lapse until Clean Air Act highway sanctions are effective. Clean Air Act highway sanctions apply in these areas two years following the date of EPA's finding of failure to submit, unless the State remedies the failure. This rule also

eliminates the transportation plan/TIP ''freeze'' in these areas.

Under the November 1993 transportation conformity rule, in ozone nonattainment areas where EPA finds a failure to submit the attainment/3% rate-of-progress SIP, no new or amended transportation plans or TIPs could be adopted after March 15, 1995 (i.e., the existing transportation plan/TIP would be ''frozen''). The conformity status of the transportation plan and TIP would have lapsed November 15, 1995.

This interim final rule also delays the transportation plan/TIP conformity lapse until the application of Clean Air Act highway sanctions for ozone nonattainment areas with incomplete attainment/3% rate-of-progress SIPs. This rule also eliminates the transportation plan/TIP ''freeze'' for these areas.

Under the November 1993 transportation conformity rule, if EPA found an area's ozone attainment/3% rate-of-progress SIP incomplete without a protective finding, the transportation plan/TIP would have ''frozen'' 120 days following EPA's incompleteness finding, and the conformity status of the transportation plan/TIP would have lapsed November 15, 1995. For areas for which EPA made an incompleteness determination with a protective finding, the conformity status of the transportation plan/TIP would have lapsed twelve months from the date of the incompleteness finding (no ''freeze'' would have occurred).

Under this interim final rule, in any ozone nonattainment area with an incomplete attainment/3% rate-of-progress SIP, the conformity status of the transportation plan/TIP will not lapse until Clean Air Act section 179(b)(1) highway sanctions are effective as a result of the incompleteness (provided the conformity status of the transportation plan and TIP does not lapse for other reasons under the transportation conformity rule). Consequently, there will be no distinction among incompleteness determinations regarding protective findings.

EPA is delaying the transportation plan/TIP conformity lapse due to failure to submit and incomplete ozone attainment/3% rate-of-progress SIPs because unforeseeable delays in the development of these SIPs, including delays beyond the control of state air quality planning agencies due to the complexity of required modeling, have convinced the agency that the grace periods in the November 1993 rule constitute a too stringent definition of ''timely'' establishment of emissions budgets in this particular context. Since states have been proceeding towards SIP development and delays have not been within their control, EPA now believes that the original grace period is unreasonable.

However, EPA continues to believe that conformity lapsing is appropriate in the prolonged absence of a complete ozone attainment/3% rate-of-progress SIP. EPA believes that the application of Clean Air Act highway sanctions signifies that SIP development has not proceeded in a timely fashion and, therefore, that the conformity process should ensure that significant new transportation projects will not be undertaken.

*C. Other Control Strategy SIPs*

This interim final rule does not change the consequences in 40 CFR 51.448 for disapproval of any control strategy SIP without a protective finding; for failure to submit or submission of incomplete CO, PM–10, or $NO_2$ attainment demonstrations; or for failure to submit or submission of incomplete 15% SIPs without protective findings. EPA believes that transportation plan/TIP ''freeze'' and conformity lapse is appropriate as currently required because in these cases adequate emissions budgets have not been established in a timely fashion.

## III. Rulemaking Process

*A. Rulemaking Procedures*

This rule is being published as an interim final rule without benefit of a prior proposal and public comment period because EPA finds that ''good cause'' exists for deferring those procedures until after publishing the changes as an interim final rule. Good cause exists for two reasons. First, it is contrary to the public interest for the transportation conformity rule to halt implementation of transportation plans, programs, and projects when for the reasons described above EPA believes that such delay is not necessary at this time for the lawful and effective implementation of Clean Air Act section 176(c).

Furthermore, the conformity consequences for ozone areas which this interim final rule delays would have occurred before full notice-and-comment rulemaking could have been completed. EPA could not have initiated full notice-and-comment rulemaking far enough in advance to effectively delay the conformity consequences at issue because it was first necessary to evaluate the States' progress in control strategy SIP development and submission, and to determine whether the existing grace periods were appropriate. In addition, it is possible that a disapproval with a protective finding could have occurred during the full notice-and-comment rulemaking process. Thus, it was impracticable to provide notice-and-comment procedures prior to the time by which EPA needs to implement these changes to avoid the conformity consequences that would otherwise result under the existing rule.

Although prior notice-and-comment rulemaking was impracticable, a draft of this rule was distributed to representatives of affected State and local transportation and air quality planning agencies and the public, and a conference call was held with stakeholders such as the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials, the American Association of State Highway and Transportation Officials, the American Public Transit Association, the National Association of Regional Councils, the American Association of Metropolitan Planning Organizations, the National Governors' Association, the Surface Transportation Policy Project, the Environmental Defense Fund, the Natural Resources Defense Council, the Sierra Club Legal Defense Fund, the Highway Users Federation, and the American Road and Transportation Builders Association to solicit input on the interim final rule prior to promulgation.

In addition, the Secretary of Transportation reviewed and concurred with this interim final rule.

This interim final rule is taking effect immediately upon publication because, as described above, conformity lapsing which is contrary to the public interest would otherwise be occurring during the 30-day period between publication and the effective date ordinarily provided under the Administrative Procedures Act (APA), 5 U.S.C. 553(d). EPA finds good cause to make this interim final rule effective immediately for the same reasons described above in justification of taking final action without prior proposal. In addition, this rule relieves a restriction and, therefore, qualifies for an exception from the APA's 30-day advance-notice period under 5 U.S.C. 553(d)(1).

The provisions of this interim final rule shall apply only for six months, during which time EPA will conduct full notice-and-comment rulemaking on these provisions and whether to make these provisions permanent. A proposed rule is published in the proposed rule section of this **Federal Register**, and the public comment period on this proposal will last until March 10, 1995. Public

comments will be addressed in a subsequent final rule, which will be promulgated before the six-month limit on the applicability of this interim final rule expires.

*B. Future Amendments to the Transportation Conformity Rule*

EPA intends to make additional limited amendments to the transportation conformity rule. EPA intends to clarify certain ambiguous language in 40 CFR 51.448 and 93.128 to ensure implementation consistent with the intent of EPA and the Department of Transportation (DOT), as expressed in guidance memoranda issued since November 1993. These changes are necessary to have legal certainty that the amendments promulgated today will continue to have their intended effect.

In addition, EPA intends to amend the transportation conformity rule in order to allow transportation control measures which are in an approved SIP and have been included in a conforming transportation plan and TIP to proceed even if the conformity status of the current transportation plan and TIP has lapsed.

EPA is not issuing these amendments in this interim final rule because prior notice-and-comment rulemaking is not impracticable in these cases. EPA intends to propose these amendments in a Notice of Proposed Rulemaking within the next several months, and representatives from the organizations listed above will be given an opportunity to comment on a draft NPRM this month.

Since publication of the transportation conformity rule in November 1993, EPA, DOT, and state and local air and transportation officials have had experience implementing the criteria and procedures in the rule. It is that mutual experience which leads to the amendments which EPA will be proposing today and in the very near future. In each case, the amendments are needed to clarify ambiguities, correct errors, or make the conformity process more logical and feasible.

There are many other issues which were debated in the original rulemaking, some of which are the subject of litigation at this time. EPA does not intend its issuance of back-to-back rulemakings to imply a willingness to open the conformity rule to amendments which suit one or the other petitioners' purpose. Both EPA and DOT, of course, are very willing and eager to assist transportation and air quality planners in complying with the rule and the statutory intent.

## IV. Administrative Requirements

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

*B. Reporting and Recordkeeping Requirements*

This rule does not contain any information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects moderate and above ozone nonattainment areas, which are almost exclusively urban areas of substantial population, and affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and Recordkeeping Requirements, Volatile organic compounds.

*40 CFR Part 93*

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: January 31, 1995.

**Carol M. Browner,**

*Administrator.*

40 CFR parts 51 and 93 are amended as follows:

## PARTS 51 AND 93—[AMENDED]

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

**Authority:** 42 U.S.C. 7401(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7602.

2. The authority citation for part 93 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671p.

3. The identical texts of §§ 51.448 and 93.128 are amended as follows:

a. By redesignating paragraphs (b)(2) and (c)(2) as (b)(3) and (c)(3);

b. In the newly redeisgnated paragraph (c)(3)(iii) by revising the reference ''paragraphs (c)(2)(i) and (ii)'' to read ''paragraphs (c)(3)(i) and (ii); and

c. By adding new paragraphs (a)(4), (b)(2), (c)(2), and (d)(4).

The identical text of additions reads as follows: § _____._____ Transition from the interim period to the control strategy period.

(a) * * *

(4) Until August 8, 1995, for areas otherwise subject to paragraph (a)(3) of this section, the conformity lapse imposed by the final sentence of paragraph (a)(3) of this section shall not apply. The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation

plan revision is submitted to EPA and found to be complete.

(b) * * *

(2) Until August 8, 1995, for ozone nonattainment areas where EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision required by Clean Air Act sections 182(c)(2)(A) and/or 182(c)(2)(B), failure to submit an attainment demonstration for an intrastate moderate ozone nonattainment area that chose to use the Urban Airshed Model for such demonstration, or failure to submit an attainment demonstration for a multistate moderate ozone nonattainment area, the following shall apply in lieu of the provisions of paragraph (b)(1) of this section:

(i) The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator; and

(ii) The consequences described in paragraph (b)(1) of this section shall be nullified if such provisions have been applied as a result of a failure described in paragraph (b)(2) of this section, and paragraph (b)(2) of this section shall henceforth apply with respect to any such failure.

* * * * *

(c) * * *

(2) Until August 8, 1995, for the ozone nonattainment areas described in paragraph (c)(2)(i) of this section, the following shall apply in lieu of the provisions of paragraph (c)(1) of this section:

(i) The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act for the failures described below, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator, in ozone nonattainment areas where EPA notifies the State, MPO, and DOT that any of the following control strategy implementation plan revisions are incomplete:

(A) The implementation plan revision due November 15, 1994, as required by Clean Air Act sections 182(c)(2)(A) and/or 182(c)(2)(B);

(B) The attainment demonstration required for moderate intrastate ozone nonattainment areas which chose to use the Urban Airshed Model for such demonstration and for multistate moderate ozone nonattainment areas; or

(C) The VOC reasonable further progress demonstration due November 15, 1993, as required by Clean Air Act section 182(b)(1), if EPA notes in its incompleteness finding as described in paragraph (c)(1)(iii) of this section that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A); and

(ii) The consequences described in paragraph (c)(1) of this section shall be nullified if such provisions have been applied as a result of a failure described in paragraph (c)(2)(i) of this section, and paragraph (c)(2) of this section shall henceforth apply with respect to any such failure.

* * * * *

(d) * * *

(4) Until August 8, 1995, for areas otherwise subject to paragraph (d)(3) of this section, the conformity lapse imposed by the final sentence of paragraph (d)(3) of this section shall not apply. The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

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[FR Doc. 95–3003 Filed 2–7–95; 8:45 am]

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## 40 CFR Parts 52 and 81

**[OH06–2–6229, OH01–2–6230, OH32–2–6231; FRL–5151–1]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

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

**ACTION:** Final rule.

**SUMMARY:** USEPA is approving a redesignation request and maintenance plan for Preble, Columbiana, and Jefferson County, Ohio as a revision to Ohio's State Implementation Plan (SIP) for ozone.

The revision is based on a request from the State of Ohio to redesignate these areas, and approve their maintenance plans, and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

**EFFECTIVE DATE:** This final rule becomes effective on March 10, 1995.

**ADDRESSES:** Copies of the requested redesignation, maintenance plan, and other materials relating to this rulemaking are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Jerry Kurtzweg (ANR–443), United States Environmental Protection, Agency, 401 M Street, S.W. Washington, D.C. 20460. (It is recommended that you telephone William Jones at (312) 886–6058, before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** William Jones, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058.

**SUPPLEMENTARY INFORMATION:** Under Section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the ozone attainment status for each area of every State. For the State of Ohio, Preble, Columbiana, and Jefferson Counties were designated as nonattainment areas for ozone. See 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to Section 107(d)(1)(C)(i) of the amended CAA, Preble, Jefferson, and Columbiana Counties retained their designations of nonattainment for ozone by operation of law. See 56 FR 56694 (November 6, 1991). At the same time, Preble and Jefferson Counties were classified as transitional areas; and Columbiana County was classified as an incomplete data area.

The Ohio Environmental Protection Agency (OEPA) requested that Preble County be redesignated to attainment in a letter dated May 23, 1986; and that Jefferson and Columbiana Counties be redesignated to attainment in a letter dated July 14, 1986. On December 20, 1993, the United States Environmental Protection Agency (USEPA) proposed to disapprove the requested redesignations. See 58 FR 66334. The public comment period was from December 20, 1993, to January 19, 1994. Only one public comment was received on the proposed rulemaking to disapprove the redesignations. It was a January 18, 1994, letter from the State of Ohio requesting a 90-day extension of

the comment period. On February 18, 1994, the USEPA extended the comment period until April 19, 1994. See 59 FR 8150. The OEPA submitted comments in an April 14, 1994, letter that included maintenance and contingency plans for the counties. The results of OEPA's public hearing and resulting revision to the maintenance and contingency plans are contained in a letter dated August 10, 1994. No other comments were received during the extended comment period.

After reviewing Ohio's April 14, 1994, and August 10, 1994, submittal, USEPA published a direct final rulemaking to approve the redesignation requests on September 21, 1994. See 59 FR 48395. At the same time USEPA published a proposed rulemaking, see 59 FR 48416, to approve the requests, in the event that adverse public comments were received. Adverse comments were received and a notice was published to remove the direct final rulemaking, but not the proposed rulemaking.

**I. Summary of Comments and Responses**

USEPA has considered the adverse comments received and has decided to proceed with formal action approving the redesignations. A summary of adverse comments submitted in response to the September 21, 1994 proposed rulemaking (59 FR 48416) and responses to these comments is provided below. All of the adverse comments received were made by Pollution Probe.

*Comment:* There remain a number of important questions and concerns with regard to the long-range transport of ozone and ozone precursors across the U.S.-Canada border. This particular redesignation request by the State of Ohio is one of a number of requests which may cumulatively have a very significant impact on our future air quality. The commentor also questioned whether the Ohio Environmental Protection Agency had evaluated the impact of Oxides of nitrogen ($NO_X$)/ Volatile Organic Compound (VOC) emissions from Ohio sources on downwind regions in Canada.

*Response:* In response, the USEPA notes that the governments of the United States and Canada are in the process of developing a joint study of the transboundary ozone phenomena under the U.S.-Canada Clean Air Quality Agreement. It is envisioned that this regional ozone study will provide the scientific information necessary to understand what contributes to ozone levels in the region, as well as, what control measures would contribute to reductions in ozone levels. This new regional ozone study is a cooperative effort between the U.S. and Canada. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will decide what is an appropriate course of action. The USEPA may take appropriate action notwithstanding the redesignation of these areas in Ohio. Therefore, the USEPA does not believe that the contentions regarding transboundary impact currently provide a basis for delaying action on these redesignation requests or disapproving the redesignations. This is particularly true since approval of the redesignations is not expected to result in an increase in ozone precursor emissions and is not expected to adversely affect air quality in Canada. In fact, decreases in both VOC and $NO_X$ emissions from the areas being redesignated are expected over the 10-year maintenance period. See 59 FR 48396–48397. It should also be noted that the redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. National Ambient Air Quality Standard (NAAQS) for any pollutant and that no previously-implemented control strategies are being relaxed as part of these redesignations.

Furthermore, USEPA notes that the extent of any contribution from these areas to monitored ozone levels in Canada cannot be determined with any degree of certainty on the basis of the information presently available to the USEPA. The extent to which emissions from these areas in Ohio, which are between 80 and 150 miles from the Canadian border, contribute to ozone formation in Canada is highly uncertain, particularly since winds flowing into areas in Ontario pass through a number of urbanized areas in both the U.S. and Canada. Ozone concentrations in Canada may be attributable to or fostered by ozone precursor emissions generated within Canadian borders. As a consequence, the USEPA does not believe that the presently available information provides any basis for affecting its decision regarding the redesignation of these areas in Ohio.

*Comment:* A growing body of evidence shows that the negative impacts to human health and vegetation do occur at or below 82 parts per billion (ppb) ozone. While we recognize that the US NAAQS for ozone is currently .12 parts per million, and that the standard is currently being reviewed, does the air quality monitoring data submitted by the State show ozone concentrations exceeding 80 ppb in the three counties under discussion or in other sections of the State?

*Response:* Yes, in Preble, and Jefferson Counties, and the counties adjacent to Columbiana County concentrations above 80 ppb have been monitored. However, as mentioned by the commentor, the monitoring data for these counties show that the counties are not in violation of the ozone NAAQS. Also, a revision to the NAAQS is currently under consideration by the USEPA. Until any change is made, however, the USEPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designation and redesignations.

*Comment:* What were the assumptions and analyses which led to the conclusion that total emissions will decrease in the three Ohio counties under discussion? Overall oxides of nitrogen emissions in the United States are projected to rise after the year 2000, even if mandatory CAA measures for stationary and mobile sources are implemented. We are unfamiliar with the types of emission reduction measures that are likely to be carried out in the United States' regions designated ''attainment.'' Future growth is one important factor which needs consideration. For example, in southeast Michigan, forecasters anticipate that an additional 6 percent growth in population will, with current trends, result in a 40 percent increase in vehicle miles travelled by 2010.

*Response:* The area source emissions were projected to grow at the same rate as the expected population growth. The population growth rate used for Preble County is 0.83386 percent per year from 1990 to 1995 and 0.6279 percent per year from 1995 to 2005. The population growth rate used for Columbiana and Jefferson Counties was about 1 percent per year from 1990 to 2005. The point source emissions growth was projected using Bureau of Economic Analysis (BEA) earnings data by Standard Industrial Classification Code (SIC). This factor varied by SIC but was generally around 1.1 percent per year. The mobile source emissions were projected using the MOBILE5A emissions model to provide emission factors for the vehicle mix in the future, and population data to project the growth in vehicle miles traveled by these vehicles. Large decreases occurred in mobile source emissions in the counties. Due to the Federal Motor Vehicle Emissions Control Program (FMVECP). These decreases resulted in overall VOC emissions reductions in all three counties, and overall $NO_X$ emission reductions in Preble, and Columbiana counties.

Jefferson county is expected to have a decrease in $NO_X$ emissions from 1990 to 2005 due to the Acid Rain provisions of the Clean Air Act. This decrease accounted for most of the reductions in $NO_X$ emissions in Jefferson County. The emissions estimates were based on a 0.5 lb $NO_X$/Million Btu emissions limit for the units affected under phase I. This same limit was estimated for units expected to be covered under phase II. The phase I limit is mandated by the Clean Air Act, but a phase II limit had not been specified by either the CAA or USEPA when the redesignation request was prepared so the same limit was used as an estimate.

Upon redesignation to attainment, these areas will be subject to the Prevention of Significant Deterioration provisions of the Clean Air Act that apply to stationary sources of air pollution. These areas are also subject to the provisions in their maintenance plans; so, that if a violation of the NAAQS occurs, the area would have to implement a contingency measure to correct the problem. In addition, these areas are still subject to the controls approved into the SIPs and would still get emission reduction benefits from the FMVECP.

## II. Rulemaking Action

The redesignation requests are approved as meeting conditions of the CAA in Section 107(d)(3)(E) for redesignation.

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

This action has been classified as a table 3 action by the Regional Administrator under the processing procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under Section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

### List of Subjects

*40 CFR Part 52*

Air pollution control, Environmental protection, Intergovernmental relations, Ozone.

*40 CFR Part 81*

Air pollution control.

Dated: January 26, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by adding a new paragraph (a)(5) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

* * * * *

(a) * * *

(5) The maintenance plans for the following counties are approved:

(i) Preble, Columbiana, and Jefferson Counties.

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES—OHIO

1. The authority citation of part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. In § 81.336 the ozone table is amended by revising the entries for Columbiana, Preble, and Jefferson Counties to read as follows:

**§ 81.336 Ohio.**

* * * * *

OHIO—OZONE

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * * | * | * | * | * |
| Columbiana County Area, Columbiana County | March 10, 1995 | Attainment. | | |
| * * * | * | * | * | * |
| Preble County Area, Preble County | March 10, 1995 | Attainment. | | |

OHIO—OZONE—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * * | * | * | * | * |
| Steubenville Area, Jefferson County | March 10, 1995 | Attainment. | | |
| * * * | * | * | * | * |

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–3072 Filed 2–7–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 180

**[PP 4F4314/R2104; FRL–4932–4]**

**RIN 2070–AB78**

## 1,4-Dimethylnaphthalene; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** EPA establishes an exemption from the requirement for a tolerance for residues of the potato sprout inhibitor 1,4-dimethylnaphthalene from the postharvest application to potatoes. D-I-1-4, Inc., requested this exemption.

**EFFECTIVE DATE:** This regulation becomes effective February 8, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 4F4314/R2104], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20450. In Person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5540.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of March 30, 1994 (59 FR 14854), which announced that D-I-1-4, Inc., 15401 Cartwright Rd., Boise, ID 83703, had submitted pesticide petition (PP) 4F4314 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the plant growth regulator 1,4-dimethylnaphthalene for use on potatoes (post- harvest).

There were no comments received in response to this notice of filing. The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include:

1. A rat acute oral study with an $LD_{50}$ of 2,730 milligrams (mg)/kilogram (kg).
2. A rabbit acute dermal study with an $LD_{50}$ greater than 2 grams (g)/kg.
3. A rat acute inhalation study with an $LD_{50}$ greater than 4.16 mg/Liter (L).
4. A rabbit primary eye irritation study with moderate irritation that dissipated by day 14.
5. A rabbit primary dermal irritation study with moderate irritation that dissipated by day 14.
6. A guinea pig dermal sensitization study with no apparent sensitization.
7. An Ames mutagenicity study that was negative in the presence and absence of metabolic activation homogenate.
8. An in vitro test for unscheduled DNA synthesis in rat liver primary cell culture that was negative.
9. A in vivo micronucleus assay that was negative.
10. No hypersensitivity Incidents were reported.

1,4-Dimethylnaphthalene has been classified as a biochemical as defined by 40 CFR 158.65. Biochemical pesticides are distinguished by their unique nontoxic mode of action, low use volume, target specificity, and natural occurrence. 1,4-Dimethylnaphthalene is naturally occurring in potatoes at levels between 1 and 10 ppm. When conditions are right for sprouting, the potato metabolizes 1,4-dimethylnaphthalene to a low enough level so that sprouting can occur. 1,4-Dimethylnaphthalene is applied to potatoes at a 2.5 ppm level up to 4 applications as a plant growth regulator during the storage season, which generally runs from October to August, to keep 1,4-dimethylnaphthalene at a sufficient concentration in the potato to continue to inhibit sprouting.

The results of the toxicity studies provided, the low-volume use pattern, and the fact that use of the product will not increase levels of 1,4-dimethylnaphthalene above levels normally found in potatoes are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of the product as a potato sprout inhibitor. Because no enforcement residue level is established by this exemption, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

1,4-Dimethylnaphthalene is considered useful for the purposes for which the exemption is sought. Based on the information and data considered, the Agency concludes that the establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the

regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: January 27, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1142, to read as follows:

**§ 180.1142 1,4-Dimethylnaphthalene; exemption from the requirement of tolerance.**

An exemption from the requirement of a tolerance is established for residues of the plant growth regulator 1,4-dimethylnaphthalene when applied post harvest to potatoes in accordance with good agricultural practices.

[FR Doc. 95–2821 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[PP 5F3188/R2107; FRL–4933–6]**

**RIN 2070–AB78**

## Pesticide Tolerances for Paraquat

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

**ACTION:** Final rule.

**SUMMARY:** This document establishes tolerances for residues of the dessicant, defoliant, and herbicide paraquat (1,1'-dimethyl-4,4'-bipyridinium ion) derived from the application of either the *bis*(methyl sulfate) or dichloride salt (both calculated as the cation) in or on the raw agricultural commodities (RACs) rice grain and rice straw. Zeneca Agricultural Products requested the establishment of these maximum permissible residues of the herbicide.

**EFFECTIVE DATE:** This regulation becomes effective February 8, 1995.

**ADDRESSES:** Written objections, identified by the document control number, [PP 5F3188/R2107], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6027.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 21, 1994 (59 FR 65744), EPA issued a proposed rule that gave notice that Zeneca Agricultural Products, 1800 Concord Pike, Wilmington, DE 19897, had submitted to EPA a pesticide petition, PP 5F3188, under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to establish tolerances for the desiccant, defoliant, and herbicide paraquat (1,1-dimethyl-4,4'-bipyridinium ion) derived from the application of either the *bis*(methyl sulfate) or dichloride salt (both calculated as the cation) in or on the raw agricultural commodities rice grain at 0.05 part per million (ppm) and rice straw at 0.06 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given

above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.205(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

**§ 180.205 Paraquat; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Rice grain | 0.05 |
| Rice, straw | 0.06 |
| * * * * * | |

* * * * *

[FR Doc. 95–2822 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 8F3634/R1069; FRL–3734–9]**

**RIN 2070–AB78**

## Propionic Acid; Exemptions from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes exemptions from the requirement of a tolerance for residues of propionic acid when used as a fungicide in postharvest application in or on the following raw agricultural commodities (RACs): cottonseed, peanuts, rice grain, and soybeans. Stop-Shock, Inc., requested these exemptions.

**EFFECTIVE DATE:** This regulation becomes effective February 8, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number [PP 8F3634/R1069], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7605C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA, Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-305-5540).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 14, 1990 (55 FR 5229), EPA issued a proposed exemption from the requirement of a tolerance under 40 CFR 180.1023 for residues of propionic acid in or on the following raw agricultural commodities: cotonseed, peanuts, rice grain, and soybeans.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Propionic acid is to be applied without dilution and immediately after harvest by use of low-pressure nozzles to achieve uniform coverage as the commodity passes by the spraying applicator. The purpose of the postharvest application is to prevent fungal growth in and on the freshly harvested commodity.

Therefore, based on the information considered by the Agency and discussed in detail in the proposed rule, and that

the exemptions from the requirement of a tolerance for residues of propionic acid in or on cottonseed, peanuts, rice grain, and soybeans would protect the public health, the Agency is establishing the exemptions as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1023 is revised, to read as follows:

### § 180.1023 Propionic acid; exemptions from the requirement of a tolerance.

(a) Postharvest application of propionic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch, and wheat grain.

(b) Propionic acid is exempt from the requirement of a tolerance for residues in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and eggs when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain.

(c) Postharvest application of propionic acid when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Cottonseed, peanuts, rice grain, and soybeans.

[FR Doc. 95–2820 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 97

**[PR Docket No. 93–305; FCC 94–343]**

## Implementation of a Vanity Call Sign System

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the amateur service rules to provide a system for the assignment of vanity call signs to amateur stations. The rule amendments are necessary so that personalized call signs are available in the amateur service. The rule amendments will satisfy the desires of those persons in the amateur community who want an opportunity to choose their own call signs.

**EFFECTIVE DATE:** March 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Wireless Telecommunications Bureau, Washington, D.C. 20554, (202) 418–0690.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order,* adopted December 23, 1994. and released February 1, 1995. The complete text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C., 20554. The complete text of this Report and Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW, Suite 140, Washington, D. C. 20037, telephone number (202) 857–3800.

### Summary of Report and Order

1. The Commission's new license processing capabilities now make it practicable to grant requests for call signs of the licensee's choice. Hence, a vanity call sign system can be implemented. These new capabilities can also be used to resume the issuance of new club and military recreation station licenses.

2. A major concern of the amateur service community is that the system adopted for allocation of vanity call signs be fair and equitable. To ensure fairness, a filing priority schedule will be adhered to.

3. The schedule has a series of starting gates. Gate One would be for former holders or a close relative of a deceased holder. Gate Two would allow Amateur Extra Class operators to apply. Gate Three would allow Advanced Class operators to apply and Gate Four would open the system to any licensee. The final gate will also allow a club station license trustee to apply for the call sign of a deceased former holder. The license trustee must obtain a written consent from a close relative of the deceased. Applications for a vanity call sign will be made on Form 610–V. A fee of $70.00 must be submitted along with the application form when requesting a new or renewed vanity call sign. Applicants will be able to list up to twenty-five call signs in the order of their preference on the Form 610–V. The sequential call sign system will continue to be available for new licensees and for those persons who do not want vanity call signs.

4. A call sign vacated by a licensee will not be available to the vanity call sign system for two years. This is consistent with the waiting period for assignability of a deceased person's station call sign or for assignability of a call sign associated with a station license that has expired.

5. The amended rules provide for the resumption of licensing of new club and military recreation station licenses. Once a new club or military recreation station license is obtained, the holder thereof may then apply for a vanity call sign, if desired.

6. This Report and Order is issued under the authority of 47 U.S.C. §§ 154(i) and 303(r).

## List of Subjects in 47 CFR Part 97

Club stations, Military recreation stations, Radio, Vanity call signs.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

## Amended Rules

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609, unless otherwise noted.

2. Section 97.3 is amended by redesignating paragraphs (a)(11) through (a)(45) as paragraphs (a)(12) through (a)(46) and adding new paragraph (a)(11) to read as follows:

### § 97.3 Definitions.

(a) * * *

(11) *Call sign system*. The method used to select a call sign for amateur station over-the-air identification purposes. The call sign systems are:

(i) *Sequential call sign system*. The call sign is selected by the FCC from an alphabetized list corresponding to the geographic region of the licensee's mailing address and operator class. The call sign is shown on the license. The FCC will issue public announcements detailing the procedures of the sequential call sign system.

(ii) *Vanity call sign system*. The call sign is selected by the FCC from a list of call signs requested by the licensee. The call sign is shown on the license. The FCC will issue public announcements detailing the procedures of the vanity call sign system.

* * * * *

3. Section 97.17 is amended by revising paragraph (f) and adding paragraph (h) to read as follows:

### § 97.17 Application for new license or reciprocal permit for alien amateur licensee.

* * * * *

(f) One unique call sign will be shown on the license of each new primary, club, and military recreation station. The call sign will be selected by the sequential call sign system.

* * * * *

(h) Each application for a new club or military recreation station license must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. No new license for a RACES station will be issued.

4. Section 97.19 is added to read as follows:

### § 97.19 Application for a vanity call sign.

(a) A person who has been granted an operator/primary station license or a license trustee who has been granted a club station license is eligible to make application for modification of the license, or the renewal thereof, to show a call sign selected by the vanity call sign system. RACES and military recreation stations are not eligible for a vanity call sign.

(b) Each application for a modification of an operator/primary or club station license, or the renewal thereof, to show a call sign selected by the vanity call sign system must be made on FCC Form 610–V. The form must be submitted with the proper fee to the address specified in the Private Radio Services Fee Filing Guide.

(c) Only unassigned call signs that are available to the sequential call sign system are available to the vanity call sign system with the following exceptions:

(1) A call sign shown on an expired license is not available to the vanity call sign system for 2 years following the expiration of the license.

(2) A call sign shown on a surrendered, revoked, set aside, cancelled, or voided license is not available to the vanity call sign system for 2 years following the date such action is taken.

(3) Except for an applicant who is the spouse, child, grandchild, stepchild, parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew, or in-law, and except for an applicant who is a club station license trustee acting with the written consent of at least one relative, as listed above, of a person now deceased, the call sign shown on the license of a person now deceased is not available to the vanity call sign system for 2 years following the person's death, or for 2 years following the expiration of the license, whichever is sooner.

(d) Except for an applicant who is the spouse, child, grandchild, stepchild, parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew, or in-law, and except for an applicant who is a club station license trustee acting with the written consent of at least one relative, as listed above, of a person now deceased who had been granted the license showing the call sign requested, the vanity call sign requested by an applicant must be selected from the groups of call signs designated under the sequential call sign system for the class of operator license held by the applicant or for a lower class.

(1) The applicant must request that the call sign shown on the current license be vacated and provide a list of up to 25 call signs in order of preference.

(2) The first assignable call sign from the applicant's list will be shown on the license grant. When none of those call signs are assignable, the call sign vacated by the applicant will be shown on the license grant.

(3) Vanity call signs will be selected from those call signs assignable at the time the application is processed by the FCC.

5. Section 97.21(a)(3) is revised to read as follows:

**§ 97.21 Application for a modified or renewed license.**

(a) * * *

(3) May apply for renewal of the license for another term. (The FCC may mail to the licensee an FCC Form 610–R that may be used for this purpose.)

(i) When the license does not show a call sign selected by the vanity call sign system, the application may be made on FCC Form 610–R if it is received from the FCC. If the Form 610–R is not received from the FCC within 30 days of the expiration date of the license for an operator/primary station license, the application may be made on FCC Form 610. For a club, military recreation, or RACES station license, the application may be made on FCC Form 610–B. The application may be submitted no more than 90 days before its expiration to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the application for renewal of the license has been received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the license expiration date, the license operating authority is continued until the final disposition of the application.

(ii) When the license shows a call sign selected by the vanity call sign system, the application must be filed as specified in § 97.19(b).

* * * * *

[FR Doc. 95–3025 Filed 2–7–95; 8:45 am]

BILLING CODE 6712–01–F

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 74–09; Notice 39]**

**RIN 2127–AF39**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** In response to petitions for reconsideration of a February 1994 final rule, this rule amends labeling requirements in Federal Motor Vehicle Safety Standard (FMVSS) 213, *Child Restraint Systems*. The final rule requires each rear-facing infant restraint system to bear a label warning against using the restraint in any vehicle seating position equipped with an air bag. This document increases the effectiveness of that warning.

**DATES:** This rule is effective May 9, 1995.

Petitions for reconsideration of the rule must be received by March 10, 1995.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590 (telephone 202–366–4919).

**SUPPLEMENTARY INFORMATION:**

### Background

On February 16, 1994 (59 FR 7643), NHTSA published a final rule amending Standard 213. The amendment required, *inter alia*, that each add-on child restraint system designed to be used while it and its occupant are rearward facing (referred to as a ''rear-facing infant restraint'') bear a label warning against using the restraint while it is rearward-facing on any vehicle seat equipped with an air bag.

For a rear-facing restraint designed to be used only while rearward facing and only for infants (referred to below as an ''infant-only restraint''), the rule required the warning to state:

*WARNING:* PLACE THIS RESTRAINT IN A VEHICLE SEAT THAT DOES *NOT* HAVE AN AIR BAG.

For a convertible child restraint (i.e., one that is adjustable so that in one adjustment position, it can be placed on a seat and used rearward facing by an infant and in another position, it can be used forward facing by a toddler), the rule required the warning to state:

*WARNING:* WHEN YOUR BABY'S SIZE REQUIRES THAT THIS RESTRAINT BE USED SO THAT YOUR BABY FACES THE REAR OF THE VEHICLE, PLACE THE RESTRAINT IN A VEHICLE SEAT THAT DOES *NOT* HAVE AN AIR BAG.

The rule required the warning to be placed on a red, yellow or orange contrasting background so that it would be conspicuous to the user.

The purpose of the warning is to reduce the likelihood that an infant would be injured or possibly killed by a deploying air bag. The rule explained why a rear-facing restraint must not be installed on a seat equipped with an air bag:

When a rear-facing infant restraint is placed on a vehicle seat, the restraint's seat back projects forward, far in front of the vehicle seat back. If the vehicle seating position is a front passenger one equipped with an air bag, the forward-projecting seat back of the infant restraint may rest on or be located close to the part of the vehicle instrument panel containing the air bag.

Placing a rear-facing restraint on such a vehicle seat raises a safety concern of the interaction between those restraints and air bags. An air bag must inflate quickly to create a protective cushion that protects occupants during frontal crashes. The quickly deploying air bag might injure an infant when it strikes the seat back of a rear-facing infant restraint.

59 FR at 7643.

### Petitions for Reconsideration

NHTSA received timely petitions for reconsideration from Kolcraft Enterprises and Jerome Koziatek & Associates. Evenflo Juvenile Furniture Company, Century Products Company, and Ms. Kathy Weber of the University of Michigan Child Protection Program (UM–CPP) submitted petitions for reconsideration after the date such petitions were due. Under NHTSA's procedures for the adoption and amendment of rules, 49 CFR 553.35, these petitions were too late to be considered petitions for reconsideration and are considered instead petitions for rulemaking.

All the parties responding to the rule raised almost identical concerns in their petitions. None of them disagreed with the agency's conclusion in the rule that a safety need exists for the warning label, or objected to the rule's requirement to place a label on each affected child restraint. Instead, the petitioners expressed misgivings about particular aspects of the wording of the warning, particularly the warning for convertible child restraints.

The warning for convertible restraints was more elaborate than that for infant-only restraints, because convertible restraints are more complex in design than infant-only restraints. As noted above, a convertible restraint is used rearward-facing with an infant and forward-facing with a toddler or older child. An infant must be positioned rear-facing so that, in a crash, the forces are spread evenly across the infant's back and shoulders, the strongest part of an infant's body.

In issuing the final rule, NHTSA was concerned that consumers might respond to a warning not to use a convertible restraint rear-facing with an air bag by turning the convertible restraint forward so that the infant is forward-facing in an air bag equipped seating position, or by not using any child restraint at all. To reduce the likelihood of those responses, NHTSA adopted a suggestion made in a

comment on the rulemaking from the American Academy of Pediatrics (AAP).

AAP suggested that the warning should be clearer that an infant restraint must be used rear-facing, regardless of the presence of an air bag. To accomplish this, AAP suggested that the warning include the statement, ''When your baby's size requires that this restraint be used in a rear-facing position * * *'' as a condition for the instruction not to use the restraint in an air-bag equipped seating position. NHTSA agreed the wording should refer to the baby's size and adopted a requirement that the warning use that specific language.

Kolcraft petitioned for reconsideration of the requirement to label convertible restraints with the phrase ''When your baby's size requires that this restraint be used in a rear-facing position * * *.'' The petitioner concurred that the warning label should not inadvertently encourage parents to turn convertible restraints to the forward-facing position when used for infants. However, Kolcraft believed that the new language may exacerbate the risk that parents will mistakenly reverse the orientation of a convertible restraint, because ''the language seems to focus on whether the baby's size 'requires' the baby to be rearward facing.'' ''[T]his will confuse parents, and appear to introduce a new criterion for deciding whether to orient a convertible seat front-facing or rear-facing.'' Kolcraft petitioned NHTSA to delete the reference to a baby's size, or replace it with ''When using this restraint with an infant, the restraint must be rear facing * * *.''

Mr. Koziatek petitioned for reconsideration of three aspects of the warning. First, similar to Kolcraft, Mr. Koziatek believed that NHTSA should reconsider the rule's reference to ''baby's size'' as a condition for positioning a convertible restraint to face the rear of the vehicle. The petitioner faulted the rule for giving no information as to when the child restraint system should be used rear-facing, and suggested remedying that shortcoming by beginning the warning with ''This restraint must face the rear for infants less than 20 pounds.'' Second, Mr. Koziatek believed that the warning is too limited in that it implies that the front center seating position in a vehicle equipped with a passenger-side air bag is suitable for a rear-facing child restraint. The petitioner was concerned that future air bag designs may encompass the widespread use of an air bag system that deploys from the passenger side position, yet inflates widely enough to protect an occupant in the front center seating position. (The petitioner apparently was alluding to an air bag system like General Motor's advertised ''air bank'' system for the Cadillac line.) Mr. Koziatek suggested broadening the language of the warning to warn against using a rear-facing child restraint ''in the front seat with a passenger side air bag.'' Third, Mr. Koziatek said that the agency should reconsider its decision not to require the label to specify the consequences of not following the warning against using the child restraint with an air bag. The petitioner believed that the consequences have to be spelled out for the public because ''The general public has been conditioned to expect an air bag to be life-saving and not life-threatening.''

**Agency Decision**

NHTSA has decided to grant the petitions for reconsideration of Kolcraft and Mr. Koziatek, and is amending the labeling requirement of S5.5.2(k) of Standard 213 in accordance with the petitioners' suggestions. With regard to the suggestion that the warning label should provide better information to the consumer about when an infant should face rearward, the agency agrees that such information is desirable. The information would reduce the likelihood that consumers would misinterpret the warning as instructing them to face an infant (weighing less than 20 pounds) forward rather than rearward in an air bag equipped seating position. Accordingly, this rule requires the warning for convertible restraints to include the statement, ''PLACE THIS CHILD RESTRAINT IN A REAR-FACING POSITION WHEN USING IT WITH AN INFANT WEIGHING LESS THAN (insert a recommended weight that is not less than 20 pounds).'' As noted in the highlighted text, manufacturers would insert a recommended weight that is not less than 20 pounds.

The 20 pound minimum criterion is in accordance with established practice and advice in the child passenger safety community that infants weighing less than 20 pounds must face rearward. The American Academy of Pediatrics recommends that parents ''[us]e the infant car seat until your child reaches 17–20 pounds or until your child's head reaches the top of the car seat. If your baby outgrows it before 20 pounds, use a rear-facing convertible car seat until your child weighs 20 pounds.'' As noted above in this preamble, infants weighing less than 20 pounds lack the skeletal and muscular structure to withstand crash forces in a forward-facing position. All rear-facing child restraint manufacturers currently specify that their child restraints must be used rear-facing until the child is at least 20 pounds.

With regard to the concern that the warning should not imply that the front center seating position in a vehicle equipped with a passenger-side air bag is suitable for a rear-facing child restraint, NHTSA concurs that the implication should be avoided. Not enough is known about the interaction of ''air bank'' type systems with rear-facing child restraints to warrant discounting the possibility that an air bank system might be incompatible with a rear-facing restraint. Accordingly, the agency has amended the warning to state, ''WHEN THIS RESTRAINT IS USED REAR-FACING, DO NOT PLACE IT IN THE FRONT SEAT OF A VEHICLE THAT HAS A PASSENGER SIDE AIR BAG.''

Finally, NHTSA agrees with Mr. Koziatek that the warning label should specify the consequences of using the child restraint with an air bag. NHTSA decided against such a requirement in the final rule, since the rule requires the use instructions accompanying the child restraint to contain this information. 59 FR at 7645. On reconsideration, NHTSA concludes that placing a description of the consequences next to the warning would help alert consumers to the importance of the warning. The agency concurs with the petitioner that the fact that an air bag can cause injury is counter-intuitive to the public generally. Information about the consequences of placing a rear-facing restraint near an air bag could more convincingly communicate the important safety need for placing the child in the rear seat. Accordingly, this rule amends the warning statement for convertible and infant-only restraints to require manufacturers to insert a statement that describes the consequences of not following the warning. NHTSA has not prescribed the exact language that must be used and instead is providing manufacturers the flexibility to describe the consequences in their own words. The agency anticipates that the description will accurately describe the potentially grave consequences of not following the warning, yet will avoid frightening consumers into not using a rear-facing restraint with an infant.

The three changes adopted today were also sought by the parties who, because their petitions for reconsideration were untimely, were deemed under the agency's rulemaking procedures to have submitted petitions for rulemaking. The requests in the petitions for rulemaking are, with one exception, substantially the same as the requests made by the reconsideration petitions granted today.

The granting of the petitions for reconsideration thus serves as final action on these requests.

One issue raised in Evenflo's rulemaking petition was not addressed by the petitions for reconsideration. Evenflo said that Cosco Inc., a child restraint manufacturer, ''joins'' in Evenflo's petition and has asked that NHTSA not require the air bag warning to be placed on a color contrasting background. According to Evenflo, Cosco believes that the requirement ''gives the airbag language undue emphasis over the other labels required by FMVSS 213. Highlighting one warning de-emphasizes and somewhat negates other equally important warnings and labels.'' Since a Cosco representative did not sign the Evenflo petition, NHTSA considers the request to be Evenflo's.

The rulemaking request is denied. The purpose of the requirement that the air bag warning label be on a color contrasting background is to make the warning conspicuous. This is important because, as noted above, the agency is concerned that, in the words of Mr. Koziatek, consumers have been conditioned to expect an air bag to be life-saving and not life-threatening. Moreover, there is little information indicating consumers are aware of the potential safety problems between air bags and rear-facing child restraints. Air bags are typically and usually correctly associated with ''safety.'' Accordingly, without a conspicuous warning to negate this association, consumers may seek to place an infant in an air bag equipped seating position, thinking that the air bag will protect the child in a crash. Since the association between air bags and safety is strong and may induce consumers to engage unwittingly in behavior that is contrary to safety, NHTSA concludes that this rule must require highlighting of the warning against use of a rear-facing child restraints in air bag equipped positions. Accordingly, since there is no reasonable possibility that the agency would issue the requested amendment at the conclusion of a rulemaking proceeding, the petition is denied.

**Effective Date**

This amendment is effective in 90 days. An effective date earlier than 180 days after the date of issuance of this rule is in the public interest for the following reasons. The effective date of the labeling requirement reconsidered in today's rule was August 15, 1994. Thus, rear-facing child restraints manufactured on or after that date must be labeled with the warning specified in the earlier rule. There is good cause for having today's amendments of the earlier rule become effective as early as possible since NHTSA believes today's rule clarifies the required warning and increases its effectiveness. Yet, a 90-day effective date is distant enough to provide manufacturers sufficient leadtime to print revised warning labels. Also, a 90-day effective date will provide some time for manufacturers to use existing stocks of labels that met the previous rule's requirement.

**Rulemaking Analyses and Notices**

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not ''significant'' under them. NHTSA has further determined that the effects of this rulemaking are minimal and that preparation of a full final regulatory evaluation is not warranted. The effects of today's rule are minor because it only makes slight changes to the labeling required by the February 1994 final rule. The costs of that earlier final rule requiring a specific warning to be labeled on rear-facing child restraints was estimated to range from $0.09 to $0.17 per rear-facing restraint. (NHTSA's regulatory evaluation for that rule was placed in docket 74–09, notice 34.) Today's rule does not change those costs. The agency also anticipated that the earlier rule could save 2 to 4 lives and could reduce 445 injuries a year, assuming that the warning is effective at preventing any placing of rear-facing restraints in air bag positions. NHTSA believes today's rule could improve the potential effectiveness of the warning.

**Regulatory Flexibility Act**

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Of the 11 current child restraint manufacturers known to the agency (not counting vehicle manufacturers that produce and install built-in restraints), there are three that qualify as small businesses. This is not a substantial number of small entities.

Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant since today's rule only makes minor changes to the existing labeling requirements for rear-facing restraints. The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will therefore not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

**Executive Order 12612 (Federalism)**

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

**National Environmental Policy Act**

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

**Executive Order 12778 (Civil Justice Reform)**

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

## PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

**§ 571.213 [Amended]**

2. Section 571.213 is amended by revising S5.5.2(k) to read as follows:

**§ 571.213 Standard No. 213, Child Restraint Systems.**

* * * * *

S5.5.2 * * *

(k)(1) In the case of each rear-facing child restraint system that is designed for infants only, the following statements—

(i) ''PLACE THIS INFANT RESTRAINT IN A REAR-FACING POSITION WHEN USING IT IN THE VEHICLE.''

(ii) ''*WARNING*: DO NOT PLACE THIS RESTRAINT IN THE FRONT SEAT OF A VEHICLE THAT HAS A PASSENGER SIDE AIR BAG. (Insert a statement that describes the consequences of not following the warning.)

(2) In the case of a child restraint system that is designed to be used rearward-facing for infants and forward facing for older children, the following statements—

(i) ''PLACE THIS CHILD RESTRAINT IN A REAR-FACING POSITION WHEN USING IT WITH AN INFANT WEIGHING LESS THAN (insert a recommended weight that is not less than 20 pounds).''

(ii) ''*WARNING*: WHEN THIS RESTRAINT IS USED REAR-FACING, DO NOT PLACE IT IN THE FRONT SEAT OF A VEHICLE THAT HAS A PASSENGER SIDE AIR BAG. (Insert a statement that describes the consequences of not following the warning.)''

(3) The statements required by paragraphs (k)(1)(ii) and (k)(2)(ii) shall be on a red, orange or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat.

* * * * *

Issued on February 2, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95–3038 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 60, No. 26
Wednesday, February 8, 1995

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1126

**[DA–95–12]**

### Milk in the Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal to suspend certain provisions of the Texas Federal milk marketing order from March 1, 1995, through July 31, 1995. The proposed suspension would remove the diversion limitation applicable to cooperative associations. Associated Milk Producers, Inc., a cooperative association representing a substantial number of producers who supply milk to the market, has requested the suspension. The cooperative asserts that the suspension is necessary to prevent uneconomical and inefficient movements of milk.

**DATES:** Comments are due no later than February 23, 1995.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, 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 rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Texas marketing area is being considered for the months of March 1, 1995, through July 31, 1995: In § 1126.13, paragraph (e)(2).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

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 rule would suspend certain provisions of the producer milk definition of the Texas order for the months of March through July 1995. The proposed suspension would remove the limitation on the amount of producer milk that a cooperative may divert to a nonpool plant.

Currently the order permits a cooperative association to divert up to one-third of the amount of producer milk that the cooperative causes to be physically received during the month at handlers' pool plants to nonpool plants. The diversion provisions provide an efficient means to move milk that is in excess of fluid milk needs directly from farms to nonpool plants for manufacturing and still be priced under the order.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing a substantial number of producers who supply milk to the market, has requested the suspension. AMPI states that during recent months the cooperative has reached maximum pooling capability because of the diversion limitations to nonpool plants. AMPI contends that during the flush season (March through July) the cooperative will be adversely impacted as local production expands and the cooperative exceeds the one-third diversion limitation. AMPI projects that when this occurs more milk will be shipped to other pool plants than is needed at such plants to gain eligibility for pooling and diversion status. Absent a suspension, AMPI asserts that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

Accordingly, it may be appropriate to suspend the aforesaid provisions from March 1, 1995, through July 31, 1995.

**List of Subjects in 7 CFR Part 1126**

Milk marketing orders.

The authority citation for 7 CFR Part 1126 continues to read as follows:

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

Dated: February 2, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95–3147 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 1131

**[DA–95–11]**

## Milk in the Central Arizona Marketing Area; Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal to suspend certain provisions of the Central Arizona Federal milk marketing order for an indefinite period beginning March 1, 1995. The proposed suspension would eliminate the requirement that a cooperative association ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of a manufacturing plant operated by the cooperative. United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the market, has requested the suspension. The cooperative asserts that the suspension is necessary to prevent uneconomical and inefficient movements of milk.

**DATES:** Comments are due no later than February 23, 1995.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, 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 rule would not have a significant economic impact on a substantial number of small entities. This rule would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, had jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Central Arizona marketing area is being considered for an indefinite period beginning March 1, 1995:

In § 1131.7(c), the words ''50 percent or more of its member producer milk (including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant) received at the pool plants of other handlers during the current month or the previous 12-month period ending with the current month.''

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

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 rule would suspend certain provisions of the Central Arizona order for an indefinite period beginning March 1, 1995. The proposed suspension would remove the requirement that a cooperative association that operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

Currently the order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month.

The proposed suspension of this shipping requirement was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA contends that the continued pool status of their manufacturing plant is threatened by an increase in milk production combined with a drop in Class I sales. UDA states that in 1994 its member production increased 17 percent over the previous year. In 1994, monthly deliveries to distributing plants also increased sufficiently to ensure UDA a safe margin over the minimum 50 percent shipping requirement to maintain pool status of its manufacturing plant. According to UDA, the increase in distributing plant demand reflected a significant increase in Class I sales in the Mexico market by Central Arizona handlers. The recent collapse of the Mexican peso has curtailed these sales and thus reduced handler requirements for bulk milk deliveries from UDA. Absent a

suspension, UDA projects that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

Accordingly, it may be appropriate to suspend the aforesaid provisions beginning March 1, 1995, for an indefinite period.

**List of Subjects in 7 CFR Part 1131**

Milk marketing orders.

The authority citation for 7 CFR Part 1131 continues to read as follows:

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

Dated: February 2, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95–3146 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–02–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50, 52 and 100

**RIN 3150–AD93**

### Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition From Free Environment, Inc. et al.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule: Extension of comment period.

**SUMMARY:** On October 17, 1994, the NRC published (59 FR 52255) for public comment a proposed revision of 10 CFR Parts 50, 52, and 100 to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The comment period for this proposed rule presently expires on February 14, 1995.

The Commission has received requests to extend the comment period based on the fact that staff guidance documents consisting of five draft regulatory guides and three standard review plan sections that were to accompany the proposed rule were delayed in issuance, and that availability of these documents were necessary to provide meaningful comments.

The Commission agrees that availability of the staff guidance documents is necessary to provide adequate comments. The staff guidance documents are not yet available and may not be available before the present comment period expires.

The Commission therefore intends to extend the comment period to allow a 75 day period after the staff guidance documents become available to allow interested persons adequate time to comment on the staff guidance documents as well as the proposed rule.

The comment period for this proposed rule is being extended to allow at least 75 days after the relevant staff guidance documents become available. At this time no firm expiration date is available. When the staff documents are available a notice will be issued providing a firm expiration date for comments.

**ADDRESSES:** Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6010, concerning the seismic and earthquake engineering aspects and Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6574, concerning other siting aspects.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 95–3153 Filed 2–7–95; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 35

**[Docket No. 95–01]**

**RIN 1557–AB44**

### Agricultural Loan Loss Amortization

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) proposes to remove its rule governing agricultural loan loss amortization, effective January 1, 1999. This proposal is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. This action is needed to eliminate the rule when it becomes obsolete.

**DATES:** Comments must be received by April 10, 1995.

**ADDRESSES:** *Comments should be directed to:* Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–01. Comments will be available for public inspection and photocopying at the same location.

**FOR FURTHER INFORMATION CONTACT:** Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

**SUPPLEMENTARY INFORMATION:**

**Background**

The OCC proposes to remove 12 CFR part 35 as a component of its Regulation Review Program. The goal of the Regulation Review Program is to review all of the OCC's rules to revise, streamline, and simplify them, and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities.

Title VIII of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 635 (1987), added 12 U.S.C. 1823(j) in an attempt to alleviate some of the financial pressures then facing agricultural banks. In particular, 12 U.S.C. 1823(j) permits an agricultural bank to amortize over a period not to exceed seven years: (1) Any loss on a qualified agricultural loan that the bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) any loss resulting from the reappraisal of property that the bank owned or acquired between January 1, 1983, and January 1, 1992, in connection with a qualified agricultural loan. The OCC implemented this statutory provision by promulgating 12 CFR part 35 with a temporary rule published on November 2, 1987 (52 FR 41959), and a final rule published on July 28, 1988 (53 FR 28373).

Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1, 1999. Reflecting this fact, the OCC's rule requires that loans under the program

must be fully amortized by December 31, 1998. 12 CFR 35.3(b).

The OCC proposes to remove 12 CFR part 35, effective January 1, 1999, obviating the need for regulatory action in the future. Prior to that date, an annotation to part 35 in title 12 of the Code of Federal Regulations would indicate the effective date for removal of the part.

### Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation has no material impact on national banks, regardless of size.

### Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

### Paperwork Reduction Act

The collection of information contained in 12 CFR 35.7 has been approved by the Office of Management and Budget (OMB) under OMB Control Number 1557–0186. This proposal would remove as unnecessary, for the reasons set forth in the preamble, that collection of information effective January 1, 1999. Comments on the OCC's proposed elimination of this collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0186), Washington, DC 20503, with a copy to the OCC's Legislative and Regulatory Activities Division (Attn: 1557–0186) at the OCC address previously specified.

### List of Subjects in 12 CFR Part 35

Accounting, Agriculture, National banks, Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 93a and 1823(j), chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 35—[REMOVED]

1. Part 35 is removed effective January 1, 1999.

Dated: February 3, 1995.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

[FR Doc. 95–3117 Filed 2–7–95; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Federal Housing Enterprise Oversight

## 12 CFR Chapter XVII

**RIN 2550–AA02**

## Risk-Based Capital

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, gives the Office of Federal Housing Enterprise Oversight (OFHEO) the responsibility for developing a risk-based capital regulation for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises). To discharge this responsibility, OFHEO must develop and implement a risk-based capital ''stress test'' that, when applied to the Enterprises, determines the amount of capital that an Enterprise must hold initially to maintain positive capital throughout a ten-year period of economic stress.

This Advance Notice of Proposed Rulemaking (ANPR) announces OFHEO's intention to develop and publish a risk-based capital regulation and solicits public comment on a variety of issues prior to the publication of a proposed rule. OFHEO requests comment from the public concerning issues set forth in the ''Solicitation of Public Comment'' subsection of the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Comments regarding the ANPR must be received in writing on or before May 9, 1995.

**ADDRESSES:** Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington, D.C. 20552.

**FOR FURTHER INFORMATION CONTACT:** David J. Pearl, Director, Research, Analysis and Capital Standards; or Gary L. Norton, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington, D.C. 20552, telephone (202) 414–3800 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 et seq. (Act), established the Office of Federal Housing Enterprise Oversight (OFHEO) as an independent office within the Department of Housing and Urban Development. OFHEO's primary function is to ensure the financial safety and soundness and the capital adequacy of the nation's two largest housing finance institutions—the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).

Fannie Mae and Freddie Mac are Government-sponsored enterprises that serve important public purposes and receive significant financial benefits, including exemption from state and local income taxes and special treatment of their securities in a variety of regulatory and transactional situations. Although the securities that they issue or guarantee are not backed by the full faith and credit of the United States,[1] their status as Government-sponsored enterprises creates, in the view of financial market participants, an implicit Federal guarantee of those securities. Furthermore, the failure of either of the Enterprises would have serious consequences for the performance of the nation's housing markets, with a potentially disproportionate effect on low- and moderate-income families.

The Enterprises engage in two principal businesses. First, they maintain a portfolio of residential mortgages and, second, they issue and guarantee pools of residential mortgages—in the form of mortgage-backed securities (MBS)—that are held by investors. One of the Enterprises' principal financial risks stems from losses associated with defaults on mortgages that they hold or guarantee. The other financial risk stems from losses associated with changes in interest rates. Because the effective maturities of the Enterprises' assets and liabilities are not the same, interest rate changes could cause the margin between the average yield on assets and the average yield on liabilities to narrow or even become negative.

The Enterprises' capital serves as a cushion to absorb financial losses for a

[1] *See* section 306(h)(2), Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(h)(2)) and section 304(b), Federal National Mortgage Association Charter Act (12 U.S.C. 1719(b)).

period of time until the cause of the losses can be remedied, thereby reducing the risk of failure. The Act requires OFHEO to establish, by regulation, risk-based capital standards for the Enterprises. The regulation will describe a risk-based capital stress test (stress test) that OFHEO will develop and implement to determine for each Enterprise the amount of capital [2] necessary to absorb losses throughout a hypothetical ten-year period marked by severely adverse circumstances (stress period).

Use of a stress test will enable OFHEO to tailor carefully the Enterprises' capital standards to the specific risks of the Enterprises' businesses. It also will provide a structure for incorporating interrelationships among different types of risk (prepayments, for example, relate to both credit and interest rate risk).

**Statutory Requirements**

The Act specifies a risk-based capital standard for each Enterprise. This standard establishes the amount of capital necessary to withstand simultaneously adverse credit and interest rate risk scenarios during the stress period plus an additional amount to cover management and operations risk, as follows:

*Credit Risk*

The Act establishes a credit risk scenario based on a regional recession involving the highest rates of default and loss severity experienced during a period of at least two years in an area containing at least five percent of the total U.S. population. The stress test will apply these default and loss rates, with any appropriate adjustments, over the ten-year stress period on a nationwide basis to the Enterprises' books of business.[3]

*Interest Rate Risk*

The Act presents two interest rate risk scenarios, one with rates rising and the other with rates falling. The Act further describes the path of the ten-year Constant Maturity Treasury (CMT) yield for each scenario and directs OFHEO to establish the yields of other financial instruments during the stress period in a reasonably consistent manner. The stress test for each Enterprise incorporates the scenario with the most adverse impact.[4]

In the rising rate scenario, the ten-year CMT yield increases during the first year of the stress period and then remains constant at the greater of (a) 600 basis points above the average yield during the preceding nine months or (b) 160 percent of the average yield during the preceding three years. The Act further limits the increase in yield to a maximum of 175 percent of the average yield over the preceding nine months.[5]

In the falling rate scenario, the ten-year CMT yield decreases during the first year of the stress period and then remains constant at the lesser of (a) 600 basis points below the average yield during the preceding nine months or (b) 60 percent of the average yield during the preceding three years. The Act further limits the decrease in yield to not more than 50 percent of the average yield in the preceding nine months.[6]

*New Business and Other Activities and Considerations*

Initially the stress test assumes that the Enterprises conduct no additional new business once the stress period begins, except for the fulfillment, in a manner consistent with recent experience and the economic characteristics of the stress period, of contractual commitments to purchase mortgages and issue securities.[7]

The stress test must take into account distinctions among mortgage product types, different loan-to-value ratios (LTVs), and any other appropriate factors.[8] OFHEO determines the appropriate consideration and treatment of all other factors, activities, or characteristics of the stress period not explicitly identified and/or treated in the Act—such as mortgage prepayments, hedging activities, operating expenses, dividend policies, etc.—on the basis of available information, in a manner consistent with the stress period.[9]

*Management and Operations Risk*

Finally, to provide for management and operations risk, after determining the amount of capital an Enterprise needs to survive the stress test, the Act requires OFHEO to increase that amount by 30 percent to set the required risk-based capital level for each Enterprise.[10]

**Philosophy Guiding Stress Test Development**

The mission of OFHEO is to ensure that the Enterprises are adequately capitalized and operating in a safe and sound manner, consistent with the achievement of their public purposes. The principal objective of risk-based capital standards is protection of the taxpayer from potential Enterprise insolvency. However, effective capital standards should also permit the Enterprises to fulfill their public purposes while pursuing prudent business practices and strategies. Although the stress test produces a single capital requirement, it effectively creates marginal capital requirements—incremental requirements for each additional dollar of business—for every type of product the Enterprises guarantee or hold in portfolio. Marginal capital requirements for mortgages held in portfolio will vary depending on the risk, as reflected in the stress test, of an Enterprise's funding strategy. These marginal capital requirements will have significant bearing on how the Enterprises choose to conduct their businesses.

OFHEO will seek to design the stress test so that the incentives it creates closely reflect the relative risks inherent

[2] For purposes of the ANPR, the term ''capital'' means ''total capital'' as defined under section 1303(18) of the Act (12 U.S.C. 4502(18)) to mean the sum of the following:

(A) The core capital of the [E]nterprise;

(B) A general allowance for foreclosure losses, which—

(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the [E]nterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) shall not include any reserves of the [E]nterprise made or held against specific assets.

(C) Any other amounts from sources of funds available to absorb losses incurred by the [E]nterprise, that the [Director of OFHEO] by regulation determines are appropriate to include in determining total capital.

The term ''core capital'' is defined under section 1303(4) of the Act (12 U.S.C. 4502(4)) to mean the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par or stated value of outstanding common stock.

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock.

(C) Paid-in capital.

(D) Retained earnings.

The core capital of an [E]nterprise shall not include any amounts that the [E]nterprise could be required to pay, at the option of investors, to retire capital instruments.

[3] Section 1361(a)(1) (12 U.S.C. 4611(a)(1)).

[4] Section 1361(a)(2) (12 U.S.C. 4611(a)(2)).

[5] Section 1361(a)(2)(C) (12 U.S.C. 4611(a)(2)(C)).

[6] Sections 1361(a)(2)(B) (12 U.S.C. 4611(a)(2)(B)).

[7] The Act states that OFHEO may consider the impact of new business conducted during the stress period after taking into consideration the results of studies conducted by the Congressional Budget Office and the Comptroller General on the advisability and appropriate forms of new business assumptions. The studies must be completed within the first year after the issuance of the final risk-based capital regulation. OFHEO may incorporate new business into the stress test four years after the regulation is issued. Section 1361(a)(3)(C) and (D), (12 U.S.C. 4611(a)(3)(C) and (D)).

[8] Sections 1361(b)(1) and (d) (12 U.S.C. 4611(b)(1) and (d)). The Act uses the phrase ''differences in seasoning of mortgages'' which is equivalent to differences in LTVs. The term ''seasoning'' is defined as the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured. Section 1361(d)(1) (12 U.S.C. 4611(d)(1)).

[9] Sections 1361(b) and (d)(2) (12 U.S.C. 4611(b) and (d)(2)).

[10] Section 1361(c)(2) (12 U.S.C. 4611(c)(2)).

in the Enterprises' different activities. To this end, OFHEO will incorporate, to the extent feasible, consistent relationships between the economic environment of the stress period and the Enterprises' businesses. This will require modeling the Enterprises' assets, liabilities, and off-balance sheet positions at a sufficient level of detail to capture their various risk characteristics. Taking all this into consideration will require a balance between the complexity and realism of the stress test and its timeliness.

**Solicitation of Public Comments**

OFHEO requests public comment on a number of subjects that must be addressed in its risk-based capital regulation. OFHEO will consider the comments received in response to this ANPR when developing a proposed rule. Following consideration of comments on the proposed rule, OFHEO will issue a final regulation. When addressing a specific question contained in this ANPR, OFHEO asks that commenters specifically note by number which question is being addressed.

*I. Credit Risk*

The Enterprises face similar mortgage credit risk in their portfolio and securitization businesses. OFHEO defines mortgage credit risk as the risk of financial loss due to borrower default and subsequent foreclosure and liquidation of a mortgaged property. Losses are realized when the unpaid loan balance on a defaulted mortgage exceeds the net proceeds of a foreclosure sale, after deducting carrying and selling costs, less any recoveries from any private mortgage insurer, recourse agreement, or other credit enhancements.

Loans with high current LTVs, where the borrowers have little to no equity in their homes, are the most likely to default.[11] For any given set of mortgage loans, the probability of default is typically low in the first year after origination, rises to a peak somewhere between the third and seventh year, and declines thereafter. If declining interest rates induce prepayments on a group of mortgage loans due to borrower refinancing activity, defaults and losses on those mortgage loans likely will be reduced, because some of the prepaid loans would ultimately have defaulted. However, the remaining group of loans is likely to be at greater risk of default, because it includes all of the original loans where the borrower would not have qualified for refinancing, but only some of the loans where the borrower was eligible.

Economic downturns result in more frequent and severe losses in all categories of mortgage loans, especially in a period of house price declines. The stress test will incorporate changes in the economic environment and simulate the relationship of those changes to mortgage defaults.

A. Defining a Stress Benchmark

The Act, in defining the risk-based capital stress test, refers to two time periods—a hypothetical ten-year ''stress period'' during which the Enterprises' capital should be sufficient to absorb losses and maintain a positive capital level while being subjected to adverse credit and interest rate risk scenarios, and the time period of ''not less than two years'' for which the ''highest rates of default and severity of mortgage losses'' occurred in a region containing at least five percent of the total population of the United States.[12] For the purposes of this ANPR, OFHEO characterizes the latter time period and region as a ''stress benchmark.'' The stress benchmark will provide the basis for the development of the credit risk stress scenario that will be applied during the ten-year stress period.

The Act permits the identification of one or more stress benchmarks. A single benchmark is conceptually appealing but presents a number of difficult issues. A single benchmark may not include sufficient data on all Enterprise product types. Patterns of multifamily and single family mortgage losses differ (see ''Mortgage Types'' below) and a stress benchmark for multifamily mortgages representing the worst regional experience for those mortgages may not coincide with the benchmark for single family mortgages based on their worst experience. Finally, data limitations may prevent OFHEO from determining loss severities during the period of highest default rates; alternatively, highest loss severities may not coincide with highest rates of default by time period or region.

Although the Act does not refer to a particular mortgage product in its reference to ''highest rates of default and severity,'' single family, 30-year, fixed-rate mortgages have long comprised the bulk of Enterprise mortgages. OFHEO expects to define a stress benchmark for these mortgages on the basis of a weighted average (by unpaid loan balance of various LTV groups) of default rates.

Existing data on loss severities may be inadequate to contribute to establishing the timing or location of the worst regional experience. Systems for the storage and analysis of data on foreclosed properties are a relatively recent development. To overcome these data deficiencies, OFHEO will consider a number of approaches to determining loss severity rates during the stress benchmark. These approaches include the use of loss severity estimates obtained from different sources and for different time periods and regions than those used to estimate the benchmark default rates.

OFHEO may use models (see ''Models of Default and Prepayment'' and ''Models of Loss Severity'' below) to establish aspects of the benchmark for which data are insufficient or unavailable. These might include, in addition to loss severities for all products, default rates for mortgage products poorly represented or non-existent in the stress benchmark. Econometric models for default, mortgage prepayment, and loss severity would facilitate consideration of the simultaneous impact of many factors on default rates, such as changes in LTVs, the impact of contemporaneous prepayments, and the impact of factors associated with mortgage product types. Models would provide a link between the performance of mortgages owned or guaranteed by the Enterprises during the stress period and performance during the stress benchmark, with due consideration of the economic circumstances of the stress period, e.g., interest rates and house prices.

*Data Issues*

OFHEO has received access to detailed information about the loss experience on mortgages that the Enterprises owned or guaranteed from the mid-1970s through the present. The type of information on mortgages that OFHEO needs to develop the stress test includes date of origination, original LTV ratio, type of mortgage, location, nature and degree of any credit enhancements, date of last paid installment, termination type, *e.g.*, default or prepayment, and the amount of any ultimate loss (including holding and selling costs). However, there are serious gaps in the data on loss severity through the early 1980s resulting from the lack of systems for the storage and

[11] For example, see C. Foster and R. Van Order, ''An Option Based Model of Mortgage Default Rick,'' Housing Finance Review, 3(4):351–372, 1984; C. Foster and R. Van Order, ''FHA Terminations: A Prelude to Rational Mortgage Pricing,'' AREUEA Journal, 13(3):273–291, 1985; and R.L. Cooperstein, F.S. Redburn, and H.G. Meyers, ''Modelling Mortgage Terminations in Turbulent Times,'' AREUEA Journal, 19(4):473–494. For a review of the literature in this area, see R.G. Quercia and M.A. Stegman, ''Residential Mortgage Default: A Review of the Literature,'' Journal of Housing Research, 3(2):341–379, 1992.

[12] Section 1361(a)(1) (12 U.S.C. 4611(a)(1)).

analysis of data on foreclosed properties and the manner in which loan balances were reported by seller/servicers.

In general, however, with the increase over time of the Enterprises' share of the overall mortgage market, the data grow increasingly rich. If necessary, OFHEO could supplement these data with data from the Federal Housing Administration or other sources such as TRW Redi and Mortgage Information Corporation.

If the stress benchmark is wholly or primarily based on Enterprise data, the loan-level data could be aggregated across the two Enterprises in order to determine the worst historical experience. Preliminary analysis suggests that the worst historical experience may be different for the two Enterprises. An alternative would be to determine the worst historical experience for each Enterprise separately and then use a simple or weighted average of default rates.

*Question 1:* What data and methodology should OFHEO use in its determination of the stress benchmark?

*Benchmark Time Period and Region*

OFHEO has considered at least two approaches for defining the benchmark time period. It could be defined as the period in which the highest rates of default occurred, that is, an ''exposure year'' approach; or the period in which the loans with the highest cumulative or lifetime rates of default were originated, which can be termed an ''origination year'' approach. At the start of the stress period, the Enterprises' books of business will include survivors from many loan origination years. An exposure year benchmark corresponds more closely to the manner in which the Enterprises' mortgage portfolios will experience the risk of credit losses as they move through the ten-year stress period. However, using exposure years may complicate adjustments for differences in LTVs and other factors (see ''Relating Stress Period Default Rates to Benchmark Default Rates'' below). Using origination years may require some adjustment for differences in mortgage age (see ''Mortgage Age'' below) since virtually all of the Enterprise mortgages will have been originated prior to the start of the stress period.

Alternative approaches to defining the stress benchmark (exposure year versus origination year) suggest alternative analyses of defaults. An exposure year approach requires the determination of default rates on loans of varying age at risk of failure within a specified period. The resulting time-period specific default rates for loans outstanding at the beginning of the period can be termed ''conditional rates.'' Because default rates vary with the age of a mortgage (see ''Mortgage Age'' below), OFHEO might define an age schedule of conditional default rates for loans outstanding at the start of the stress benchmark.[13] For comparison across time periods and regions, synthetic cumulative default rates for the stress benchmark could be derived under a common set of prepayment assumptions. In an origination year approach, either cumulative or conditional default rates could be used.

The Act requires that the benchmark region comprise a contiguous area containing at least five percent of the total United States population. Part or all of states such as Texas or California satisfy this population requirement; however, areas experiencing the highest rates of default may cross over one of these state's boundaries into adjoining states. As appropriate, OFHEO will use a definition of benchmark region that includes more than one state, part of one state, or parts of several states.

*Question 2:* How should the benchmark time period be defined?

*Measurement of Default*

Default can be defined in several ways: Defaults can be deemed to occur at the time a borrower ceases making payments, when a loan payment is past due by a contractually specified number of days, on the date of foreclosure, or on the date when losses are recognized. Defaults can be measured on a gross basis or net of any subsequent cures.

*Question 3:* What are the relative merits of the alternative approaches for the measurement of mortgage defaults?

B. Relating Stress Period Default Rates to Benchmark Default Rates

Default rates during the stress period may differ from the default rates associated with the stress benchmark. This difference may result from differences between the characteristics and composition of an Enterprise's mortgages at the start of the stress period relative to those of the mortgages identified with the stress benchmark. Stress period default rates may also differ from stress benchmark rates as a result of differences in the stress period environment, such as interest rates and inflation. OFHEO must also specify the timing of defaults and losses during the stress period.

The Act requires that OFHEO, in establishing the stress test, take into account appropriate distinctions among types of mortgage products, differences in LTVs, and other factors that OFHEO's Director considers appropriate.[14] Such factors include prepayment activity, mortgage age, and loan size. The Act also requires an adjustment for the effects of general inflation in the highest interest rate environment in the stress test.[15]

*Loan-to-Value Ratios*

The payment of principal and changes in the value of the property securing a mortgage affect LTVs over time. Repayments of loan principal and rising property values lower LTVs, while falling property values raise LTVs. Because LTV is a common measure of borrower equity, and borrower equity is a major factor determining defaults and losses, the stress test must take into account changes in LTVs. If distributions of LTVs during the stress period differ from those for the same types of loans associated with the stress benchmark, defaults and losses during the stress period will likely differ from those of the benchmark.

All loans owned or guaranteed by the Enterprises at the start of the stress period will have been originated prior to that time. Although relatively good estimates of property value are available at the time of loan origination, OFHEO will need to use house price indexes to obtain estimates of the LTVs for mortgages at the start of, and possibly throughout, the stress period.[16] OFHEO

[13] Age is often a proxy for additional unobserved factors affecting the default probabilities of individual mortgages. Immediately after origination, default is unlikely for all borrowers. Default rates first rise over time as new information about properties and borrowers is revealed. Then as relatively weaker borrowers default, the average rate of default declines. See, for example, the discussion in C. Pestre, P. Richardson, and C. Webster, ''The Lehman Brothers Mortgage Default Model and Credit-Adjusted Spread Framework,'' Mortgage Market Analysis, Lehman Brothers, Fixed Income Research, January 28, 1992. Other influential default studies that have included mortgage age as an explanatory factor include: T. Campbell and J. Dietrich, ''The Determinants of Default on Conventional Residential Mortgages,'' Journal of Finance, 38(5):1569–1581, 1983; D. Cunningham and C. Capone, ''The Relative Termination Experience of Adjustable to Fixed-Rate Mortgages,'' The Journal of Finance, 45(5):1687–1703, 1990; and J.M. Quigley and R. Van Order, ''More on the Efficiency of the Market for Single Family Homes: Default,'' Center for Real Estate and Urban Economics, University of California, Berkeley, 1992.

[14] Section 1361(b)(1) (12 U.S.C. 4611(b)(1)).

[15] Section 1361(a)(2)(E) (12 U.S.C. 4611(a)(2)(E)).

[16] For an origination year benchmark, OFHEO will likely have access to accurate information about the original LTVs for all benchmark loans. On the other hand, to develop an exposure year benchmark, OFHEO will have to estimate LTVs during the benchmark time period for all loans

Continued

intends to use a repeat sales index based on sales (or appraisals undertaken by borrowers in conjunction with refinancing the mortgages) of the Enterprises' owned and guaranteed portfolios (see ''House Price Indexes'' below).

Models of mortgage default and prepayment (see ''Models of Default and Prepayment'' below) emphasize the importance of LTV because of its direct relationship to homeowner's equity, defined as the difference between the value of a property and the outstanding principal balance of the related mortgage. These models differ in their treatment of house price changes and with regard to how changes in equity affect default and prepayment. For example, one approach assumes that defaults occur only among loans with negative equity.[17] House price indexes only provide estimates of the average change in property values between two dates. Because changes in individual property values are not continuously observed, simulation models have been used to characterize the distribution of changes in house prices relative to the market average. Estimates of the percentage of loans with negative equity and estimates of default rates can be derived from these distributions.

This approach assumes that homeowner's equity includes not just the difference between property value and outstanding loan amount, but also the current value of the mortgage to the borrower. A below-market rate loan has positive value. The precise value of the mortgage depends on the loan interest rate relative to the current market rate and the borrower's expectations about future interest rates and mobility. A borrower whose loan has a fixed contract rate below current market yields has more to lose by defaulting than a borrower with a note rate above the current market rate.

*Question 4:* What is the appropriate way in which to adjust the LTVs of mortgages in the stress test?

*Question 5:* If estimates of the distribution of house price changes are used to adjust the LTVs of mortgages, what is an appropriate method, e.g., stochastic process?

*Question 6:* In what manner, if at all, should OFHEO incorporate mortgage value as a factor affecting defaults?

### *Mortgage Types*

#### *Single Family*

The Act requires that the stress test consider differences in mortgage types (single family or multifamily, fixed or adjustable rate, first or second lien, owner-occupied or investor owned, positive or negative amortization, alternate term to maturity, etc.).[18] Risk characteristics of different types of mortgages vary considerably. Because of the fundamental differences between single family and multifamily mortgage risk, we discuss the latter in a separate section below.

Given that OFHEO plans to establish the stress benchmark based on single family, 30-year, fixed-rate mortgages, the Act calls for OFHEO to identify the worst rates of default and losses for any time period or region.[19] The Enterprises may not have held certain types of single family mortgages in the stress benchmark OFHEO identifies. Other types of single family mortgages held during the stress benchmark may have experienced their worst defaults and losses at other times or in other regions.

Alternative approaches could include use of multivariate models to estimate separate equations for different mortgage products or different mortgage features, default rates representing some multiple of the standard single family mortgage, or some combination of these approaches (see ''Models of Default and Prepayment'' below).

*Question 7:* How should OFHEO relate other types of mortgages to a single stress benchmark developed based on single family, 30-year, fixed-rate mortgages?

#### *Multifamily*

While single family properties are both a source of shelter and, for most families, their most valuable financial asset, multifamily properties are primarily income-producing businesses for their owners. Multifamily loans are less homogeneous and subject to a more diverse set of risks than single family loans. The multifamily market has more pronounced business cycles and is heavily affected by tax and regulatory policy. Patterns of losses over time for multifamily loans have not tracked those of the single family market. The Enterprises operate several different types of multifamily programs, some of which rely heavily on lender recourse or other forms of credit enhancement with differing risk characteristics.

Data needs in analyzing multifamily loans are greater than for single family loans and yet the quality of such data is poorer. Data are incomplete and cover a smaller portion of the multifamily market than the single family market. There is also a dearth of research on critical multifamily credit risk issues.

For the owner of a multifamily property, net operating income (NOI) plays a more important role than equity in the decision to default. A property's debt service coverage, rather than LTV ratio, may be the most important indicator of multifamily credit risk, yet available data can only provide a short time-series for income. Multifamily value indexes are problematic because there are fewer transactions than in the single family market and property appraisals are less reliable. Appraisals are less reliable due to the varying methodologies used to calculate multifamily property income and the application of so-called ''capitalization rates'' to NOI.[20]

Prepayments play a far less significant role in the analysis of multifamily credit risk than single family credit risk because ''lockouts'' and yield maintenance agreements effectively prevent most multifamily borrowers from refinancing to take advantage of declining interest rates. The Enterprises' activity in the multifamily market is expected to increase significantly in future years in order to meet the affordable housing goals established under the Act.[21] Thus, the treatment of multifamily risks will be increasingly important.

*Question 8:* How should existing and emerging multifamily data sources be identified?

*Question 9:* What are alternative empirical and theoretical approaches to the estimation of multifamily credit risk?

*Question 10:* How should the projection of defaults and losses on the Enterprises' multifamily portfolio be related to a single family stress benchmark?

#### *General Price Inflation*

The Act requires that OFHEO adjust credit losses in the stress test when large increases in interest rates imply higher rates of general price inflation.[22] If the ten-year CMT yield is assumed to increase by more than 50 percent over the average yield during the preceding

originated earlier. OFHEO would use house price indexes for this purpose.

[17] *See* Foster and Van Order, *supra*, (1984, 1985).

[18] Sections 1361(b)(1) and (d)(2) (12 U.S.C. 4611(b)(1) and (d)(2)).

[19] Section 1361(a)(1) (12 U.S.C. 4611(a)(1)).

[20] Government Accounting Office, ''Federal Home Loan Mortgage Corporation: Abuses in Multifamily Program Increase Exposure to Financial Losses'' (Oct. 1991); J.M. Abraham, ''On the Use of a Cash Flow Time-Series to Measure Property Performance,'' forthcoming in Journal of Real Estate Research; and J.M. Abraham, ''Credit Risk in Commercial Real Estate Lending, ''Federal Home Loan Mortgage Corporation, 1994 presented at the 1994 meetings of the American Real Estate and Urban Economics Association (available from OFHEO).

[21] Sections 1331–1336 (12 U.S.C. 4561–4566).

[22] Section 1361(a)(2)(E) (12 U.S.C. 4611(a)(2)(E)).

nine months, inflation is presumed to be ''correspondingly higher.'' If, for example, the ten-year CMT yield were to have averaged eight percent during the past nine months, a 50 percent increase would raise it to 12 percent. The Act, however, would permit an increase to 14 percent.

OFHEO would first determine what annual percentage difference in general inflation rates best corresponds to the difference between a 12 percent and a 14 percent ten-year CMT yield over a nine-year period. The difference in inflation rates could be assumed to be equal to the difference in interest rates or it could be based on an estimated historical relationship.

OFHEO would then translate that higher inflation rate into individual house price changes. Again, the differences in house price changes could be assumed to be equal to the difference in general price inflation rates or could be based on an estimated relationship.

As the last step, OFHEO would translate the difference in house price changes into differences in defaults. This could be done in the context of a multivariate default and prepayment model used for making many adjustments simultaneously (see ''Models of Default and Prepayment'' below), or it could be the subject of a separate analysis.

*Question 11:* Should OFHEO assume a ''one-to-one'' relationship between long-term differences in interest rates, general price inflation rates, and house price inflation rates or should it estimate more complex, but potentially more realistic, relationships between these phenomena?

*Question 12:* What is the best method of modeling the effects of higher house prices on defaults?

*Mortgage Prepayments—Credit Risk*

Prepayments are a significant factor in interest rate risk, but they also affect credit losses. Interest rate changes have a significant influence on mortgage prepayments. Prepayment rates are sensitive to the differences between current market yields and the levels of mortgage rates among outstanding mortgages. A homeowner today will refinance (and prepay) when current mortgage rates fall as little as 50 basis points below the rate on his or her mortgage.

Prepayment rates also depend on the time paths of interest rates. Homeowners who fail to refinance once mortgage rates become advantageous are relatively unlikely to do so in the future (many may not qualify for refinancing). Thus, prepayment rates for mortgages with a given coupon rate rise as interest rates fall below a particular threshold, but they eventually will slow, even if interest rates remain at the new lower levels or continue to decline. This phenomenon is commonly known as ''burn-out.''

The expected pattern of prepayments in the stress period might be quite different from the pattern experienced during the benchmark period. The drastic yield curve shifts that will be experienced during the initial year of the stress period will almost certainly not be found during the benchmark period that OFHEO must identify. The greater number of mortgages that prepay, the fewer are the candidates for subsequent default. Conversely, the fewer mortgages that prepay, the greater the number remaining that might default. At the same time, the default risk of mortgages remaining after a refinancing wave may be higher than previously. Many homeowners who did not take advantage of attractive refinancing opportunities may have been unable to do so because of higher risk profiles. Given the widely divergent interest rate movements that the Enterprises may experience during the stress period, loss adjustments for differing prepayment behavior could be considerable.

If OFHEO expresses mortgage default rates as conditional rates, defaults during any given time interval of the stress period will depend on the proportion of mortgages outstanding at the beginning of that time interval. Such an approach would, in effect, make a substantial adjustment for prepayments. A more complicated adjustment would take into account the generally higher quality of loans eligible for refinancing. In a stress scenario involving falling interest rates, for example, the stress test might take into account the generally higher quality of loans that qualify for refinancing and the potentially lower quality of surviving loans (see ''Models of Default and Prepayment'' below). Alternatively, if the stress test involves no interaction of the total amount of defaults and prepayments, OFHEO still might adjust the timing of defaults during the stress period to be consistent with prepayments expected in a particular interest rate scenario. Mortgage prepayments are discussed further under ''Interest Rate Risk'' below.

*Question 13:* Should anticipated prepayments affect the volume or timing of defaults in the stress period?

*Mortgage Age*

Holding homeowner's equity constant, a number of factors make the likelihood of borrower default vary over the life of a loan. On one hand, changes in a borrower's circumstances subsequent to the loan's origination, such as unemployment, marriage, divorce, childbearing, mortality, and residential mobility, affect the likelihood of default and prepayment, and the cumulative frequency of such events increases as a loan ages. On the other hand, a record of consistent payments by a borrower over time increases the probability of continued loan performance.

Models that have included variables for both homeowner's equity and mortgage age have found the contribution of age to be statistically significant.[23] This may be particularly important if an origination year approach is used in the benchmark. Using an origination year approach, loans in the stress benchmark would all be newly originated loans, while those at the beginning of the stress period would be a mixture of old and new loans.

*Question 14:* Is it appropriate for OFHEO to factor mortgage age into the stress test, and, if so, what is the best method of doing so?

C. Models of Default and Prepayment

There are a number of approaches to relating the factors discussed above, such as LTV, mortgage type, mortgage age, and prepayments, to the performance of the Enterprises during the stress period. A comprehensive way to incorporate all of these factors into the stress test would be to estimate joint multivariate models of default and prepayment.[24] A joint model of default and prepayment would ensure the consistency of these key variables and reflect an appropriate time pattern of defaults as well. Researchers have estimated a number of such models.[25]

[23] For example, see the papers cited in footnote 11 above.

[24] Due to the unique difficulties of modeling multifamily default and prepayment, multifamily and single-family loans would probably need to be modeled separately. The modeling of loss severity is discussed in the next section.

[25] Multinomial logit models for default have been estimated by Campbell and Dietrich (1983) *supra*; P. Zorn and M. Lea, ''Mortgage Borrower Repayment Behavior: A Microeconomic Analysis with Canadian Adjustable Rate Mortgage Data, AREUEA Journal, 17(1):188–136, 1989; and Cunningham and Capone (1990) *supra.* More recently, proportional hazards models have been used to analyze default and prepayment. See, for example, J. Quigley, ''Interest Rate Variations, Mortgage Prepayments and Household Mobility, Review of Economics and Statistics, 119(4):636–643, 1987; and J.M. Quigley and R. Van Order, ''More on the Efficiency of the Market for Single Family Homes: Default,'' Center for Real Estate and Urban Economics, University of California, Berkeley, 1992.

A joint approach to default and prepayment would generate default rates reasonably related to the stress benchmark, while simultaneously generating prepayment rates that are consistent with the interest rate characteristics of the ten-year stress period. To estimate a multivariate default/prepayment model, OFHEO could draw on all relevant historical data, not just data from the stress benchmark. The model might include explanatory variables such as LTVs at origination, current LTVs (determined through the application of an appropriate house price index), differences between actual mortgage coupons and current market rates, interest rate paths, mortgage age, dummy variables for time period and location of mortgaged property, and additional characteristics specific to different mortgage products. The estimation procedure could allow for changing coefficients over time to reflect structural changes in prepayment and default behavior. During the stress period, explanatory or dummy variables, reflecting the special circumstances of the stress benchmark, would be set at their benchmark levels.

While multivariate models allow for the most realistic estimates of defaults and prepayments, OFHEO recognizes the difficulties of such an approach. Insufficient data may complicate model selection and the estimation of some individual parameters. One of the most simple approaches would be to measure cumulative defaults in the stress benchmark for the most common 30-year, fixed-rate, 80 percent LTV mortgages and then spread those defaults evenly or according to some predetermined pattern over the ten-year stress period, with no consideration of prepayments. Losses on other mortgage types and LTVs could be set at simple multiples of the ''standard'' loss rate based on average historical experience. All other possible variables might be ignored.

Many approaches of intermediate complexity exist. For example, OFHEO could determine the stress benchmark default rates for standard 30-year, fixed-rate, single family mortgages for several LTV categories and a few other types of mortgages. Relative defaults on additional mortgage types would be determined from more recent data using multivariate models, which would also provide adjustment factors for some mortgage features and other relevant variables. Prepayments could be modeled separately, affecting projected defaults by changing the volume of surviving loans (See ''Mortgage Prepayments—Interest Rate Risk'' below). The time patterns of defaults could also be modeled separately as a function of mortgage age.

*Question 15:* What are the relative merits of using a joint model of default and prepayment in the stress test?

*Question 16:* What is an appropriate statistical method for estimating a joint model of default and prepayment?

*Question 17:* Should defaults be expressed in terms of conditional failure rates (hazards), cumulative default rates, or in some other manner?

*Question 18:* What explanatory variables should be included in a statistical model for default and prepayment?

*Question 19:* What is an appropriate level of statistical aggregation for the estimation of a joint model of default and prepayment?

*Question 20:* How should the impact of house price trends, interest rates, and other economic factors be incorporated into a model of default and prepayment?

D. Models of Loss Severity

Due to the varying quality of data on losses on defaulting loans, OFHEO may be unable to establish actual loss severities for the stress benchmark. Even if loss severities are incorporated in the stress benchmark, OFHEO may make adjustments to reflect changes in factors that affect loss severities. Consequently, OFHEO will conduct a separate analysis of loss severity based on all available data. This section examines some of the issues involved in modeling loss severity, including approaches for linking loss severity rates to the stress benchmark.

Loss severity refers to the actual dollars lost on a defaulted loan and allows credit risk to be quantified in dollar terms. Severity is the extent to which the costs associated with default, foreclosure, and disposition exceed the revenues associated with these processes. The major costs are the loss of loan principal, transaction costs at both foreclosure and disposition, and carrying costs throughout the process. The major revenues are foreclosure sale price and mortgage insurance payments.

Loss severity, like default, depends on numerous factors. Some factors—original LTV ratio, LTV ratio at time of default, original loan size, occupancy status, type of structure, and presence or absence of mortgage insurance—are the factors that also influence the likelihood of default. Other factors—methods of disposition, state foreclosure laws, and home price movements after default—influence severity without affecting the likelihood of default.[26]

OFHEO is considering using a multivariate statistical model to estimate the separate effects of these factors on severity. OFHEO may develop a separate model for each of the cost and revenue components of loss severity since each component is affected by different factors. In the event that data on the individual revenue and cost components of loss severity are unavailable, an alternative approach would be to model overall loss severity directly.

Another less complex option is to estimate the individual components without multivariate statistical analysis. OFHEO could set fixed parameters for the components of severity—foreclosure costs might be x percent of unpaid principal balance (UPB), carrying costs equal to y percent of UPB and sales prices being z percent of UPB—while allowing severity to vary based on, for example, the presence or absence of private mortgage insurance or state foreclosure laws. The simplest possible option would be to assume that all defaulted loans face the same level of severity as a percentage of UPB.

There are a number of ways in which rates of loss severity may be related to the stress benchmark rates of default and the corresponding rates of default during the stress period. Given the impact of state foreclosure laws on loss severity, default rates and loss severity will be linked through the geographic location of the mortgages. For example, loss severities are likely to be lower in states where foreclosure laws are relatively more favorable to the lender.

The assumptions about changes in house prices in the stress benchmark and during the stress period will affect the determination of foreclosure sales prices and loss severity. Defaults are more likely to have occurred when borrowers' properties have appreciated much less than the average for their region. This implies that house price indexes used to model loss severity would best be based on properties that have experienced lower than average appreciation.

[26] See, for example, T. Clauretie and T.N. Herzog, ''How State Laws Affect Foreclosure Costs,'' Secondary Mortgage Markets, 6(Spring):25–28, 1989; T. Clauretie and T.N. Herzog, ''The Effect of State Foreclosure Laws on Loan Losses: Evidence from the Mortgage Insurance Industry,'' Journal of Money, Credit, and Banking, 22(2):221–233, 1990; E. Bruskin and M. Buono, ''A New Understanding of Loss Severity: Time is (of) the Essence,'' in Mortgage Securities Research, Goldman-Sachs, September 1994; and V. Lekkas, J. Quigley, and R. Van Order, ''Loan Loss Severity and Optimal Mortgage Default,'' AREUEA Journal, 21(4):353–371, 1993.

*Question 21:* What are the explanatory factors OFHEO should consider in modeling loss severity?

*Question 22:* Should OFHEO model the individual cost and revenue components of severity or should OFHEO model only overall severity?

*Question 23:* What is an appropriate house price index for real estate owned (REO) properties? In estimating foreclosure sales prices, should OFHEO use a house price index based on all properties or a house price index based only on REO properties?

E. House Price Indexes

The Act requires that OFHEO use house price indexes to determine changes in the values of properties securing mortgages owned or guaranteed by the Enterprises and the corresponding changes in LTVs. Changes in property values are—

determined on an annual basis by region, in accordance with the Constant Quality Home Price Index published by the Secretary of Commerce (or any index of similar quality, authority, and public availability that is regularly used by the Federal Government).[27]

Since the second quarter of 1994, the Enterprises have published the quarterly Conforming Mortgage House Price Index (CMHPI) for the nine Census divisions. This represents a significant improvement over the annual four Census region Commerce Constant Quality Index (CCQI). The CMHPI is based on a weighted repeat sales (WRS) approach in which multiple transactions, *i.e.*, mortgage originations, for individual properties are matched by street address to obtain changes in sales prices or appraisal values. Observed property values and transactions dates are then combined in a multivariate statistical model to estimate an index of housing values.[28]

OFHEO believes that a WRS index based on Enterprise data offers a number of advantages for estimating the changing LTVs of the Enterprises' mortgage assets. Perhaps foremost among these is the direct correspondence between index data and the housing segment serviced by the Enterprises. This factor, along with others, should make the index more accurate for establishing the current market values of properties securing mortgages held or guaranteed by the Enterprises. In addition, a WRS index based on Enterprise data will allow OFHEO to estimate changes in housing values at lower levels of geographic and temporal aggregation, and with greater statistical precision, than the CCQI allows. In order to meet the requirements of the Act regarding the use of an alternative house price index, OFHEO will produce and publish a similar house price index or indexes using data on the historical mortgage transactions of the Enterprises.

Issues that have a bearing on the application of house price indexes to the risk-based capital test include the appropriate level of geographic aggregation, sample selection and appraisal bias, and the effect of index revisions as new data becomes available.[29]

*Geographical Aggregation*

Aggregation across housing markets with imperfectly correlated house price changes will result in biased estimates of the average levels of appreciation in individual markets. This bias can be characterized in terms of the smoothing of market-wide indexes, with a corresponding increase in the apparent volatility of individual house prices around the market index. Excessive disaggregation, however, may reduce the frequency at which indexes can be meaningfully computed and subject them to large revisions.

*Question 24:* What principles should OFHEO use in selecting the optimal level of geographic aggregation for the stress test?

*Bias*

As discussed below, potential sources of statistical bias include sample selection bias and appraisal bias.

*Sample Selection Bias*

Even within the total database of Enterprise mortgages, non-random sampling of individual properties with repeat transactions could result in an index that is biased for the larger population of Enterprise properties. For example, the conforming loan limit and year-to-year changes in the limit could result in sample selection bias in the estimated parameters of a repeat transactions index. A closely related form of sample selection bias can occur when the waiting time between repeat transactions is correlated with the change in house prices. For example, if more rapidly appreciating properties turn over within shorter time intervals, they will appear in the repeat sample more quickly. In this case, appreciation rates for repeat transactions near the end of the sample period will not be representative. Thus, sample selection bias would be greater near the end of the index.

*Appraisal Bias*

Approximately 85 percent of the repeat transactions used by the Enterprises to estimate WRS house price indexes involve a refinance transaction.[30] Appraisals provide useful information on house values in the absence of sales transactions. However, the use of appraisals in real estate valuation is thought to impart bias by smoothing the fluctuations in housing values. Appraisals are derived through comparisons with properties that have either been sold or listed for sale within the past several months and may fail to indicate more recent changes in housing values.

*Question 25:* Should house price indexes estimated using Enterprise data include adjustments for identifiable sources of statistical bias?

*Question 26:* What additional sources of statistical bias exist and what are possible corrective actions that may be taken to address them?

*Question 27:* What methods of accounting and correcting for sample selection bias should be used?

*Question 28:* Should a statistical adjustment to the WRS house price index be made to address the impact of appraisal bias?

*Revision Volatility*

As data on new transactions are obtained each quarter, new repeat transactions can be combined with transactions that occurred in the past. Thus, the quarterly index estimation process involves the revision of the entire index in light of new information.

[27] Section 1361(d)(1) (12 U.S.C. 4611(d)(1)).

[28] *See* W. Stephens, Y. Li, V. Lekkas, J. Abraham, C. Calhoun, and T. Kimner, ''Agency Repeat Transactions,'' revised August 1994, forthcoming in Journal of Housing Research (available from OFHEO).

[29] Methodological issues related to the estimation of repeat transaction house price indexes are discussed in the following papers: M.J. Bailey, R.F. Muth, and H.O. Nourse, ''A Regression Method of Real Estate Price Index Construction,'' Journal of the American Statistical Association, 58:933–942, December 1963; K.E. Case and R.J. Shiller, ''Prices of Single-Family Homes since 1970: New Indexes for Four Cities,'' New England Economic Review, 45–56, September/October 1987; K.E. Case and R.J. Shiller, ''The Efficiency of the Market for Single Family Homes,'' American Economic Review, 79:125–137, 1989; J.M. Abraham, J.M. and W.S. Schauman, ''New Evidence on Home Prices from Freddie Mac Repeat Sales,'' Journal of the American Real Estate and Urban Economics Association, 19:333–352, 1991; C.A. Calhoun, ''Estimating Changes in Housing Values from Repeat Transactions,'' Federal National Association International meetings (available from OFHEO); and C.A. Calhoun, P. Chinloy, and I.F. Megbolugbe, ''Temporal Aggregation and House Price Index Construction,'' Federal National Mortgage Association, forthcoming in Journal of Housing Research (available from OFHEO); and B. Case, H.O. Pollakowski, and S.M. Wachter, ''On Choosing Among House Price Index Methodologies,'' Journal of the American Real Estate and Urban Economics Association, 19(3):286–307, 1991.

[30] *See* Stephens, *et al., supra.*

Depending on the level of geographic aggregation, this can result in substantial changes in historical values of the index and the implied changes in the LTVs of Enterprise mortgages.

*Question 29:* Should changes in WRS indexes resulting from revision volatility be reflected in indexes used in a stress test? If so, what should be the frequency of such revisions?

F. Third Party Credit Issues

The Enterprises have credit exposure to institutions that provide mortgage credit enhancements or that serve as counterparties to derivative transactions. This exposure arises because the adverse economic environment of the ten-year stress period may cause some fraction of these institutions to fail and be unable to meet their financial obligations to the Enterprises.

*Credit Enhancements*

The Enterprises reduce their exposure to mortgage credit losses through a variety of credit enhancements that transfer some or all of the risk to other parties. These credit enhancements include lender recourse, mortgage insurance, and pool insurance.

The use of mortgage insurance illustrates how credit enhancements work to mitigate credit losses and highlights some of the issues OFHEO must address. Generally, the Enterprises may not purchase a conventional mortgage whose LTV ratio exceeds 80 percent unless the seller retains a participation interest or enters into a repurchase agreement, or unless the mortgage is insured by a qualified insurer.[31] If insured mortgages experience actual losses, the insurance fully or partially compensates the Enterprises for those losses.

Applying an approach used by credit rating agencies for private mortgage insurers, some insurers may be assumed to go out of business during the stress period.[32] To reflect this possibility, OFHEO's stress test might assume the failure of some fraction of the private mortgage insurers who would then be unable to entirely fulfill their contractual obligations to the Enterprises.

*Question 30:* How should OFHEO calculate loss mitigation due to credit enhancements?

*Question 31:* What should OFHEO assume about the scope of coverage provided by credit enhancements?

*Question 32:* What assumptions should OFHEO make regarding the failure of credit enhancements over the stress period?

*Derivatives Counterparties*

The Enterprises use non-mortgage derivatives—interest rate and foreign exchange rate contracts—to hedge interest rate and foreign exchange rate risk. Should a counterparty default on its obligation under a derivative contract, an Enterprise may have to pay a new counterparty to take on the remaining obligation.

Derivatives counterparties present some of the same issues as credit enhancements. Generally, during an economic downturn, as one counterparty's credit deteriorates, the other party to the transaction may increase collateral requirements until eventually the value of pledged collateral more than covers risk exposure. Therefore, with prudent counterparty risk management, losses are most likely to occur due to unexpected counterparty bankruptcies. Such losses may be more directly related to potential financial market disturbances than to general economic conditions.

*Question 33:* How, if at all, should OFHEO incorporate the effect of counterparty defaults in the risk-based capital test?

G. Non-Mortgage Investments

The Enterprises maintain non-mortgage investment portfolios that include Treasury securities, federal funds, time deposits, obligations of states and municipalities, auction rate preferred stock, medium-term notes, asset-backed securities, repurchase agreements, and other instruments. At the end of the third quarter in 1994, these investments totaled $11.5 billion at Freddie Mac and $35.1 billion at Fannie Mae. On average in recent quarters, these investment portfolios have ranged from two to five percent of assets plus MBS.

Many of these investments or their issuers are rated by the credit rating agencies. Even though these are very short-term and liquid investments, some of the issuers or the investments may be assumed to default during the stress period. To reflect this possibility, OFHEO's stress test might assume the failure of some fraction of the investments or issuers, based on their credit rating.

*Question 34:* How should OFHEO simulate the default behavior of investments or issuers of short-term, liquid investments?

*Question 35:* What assumptions should OFHEO make about the performance of rated investments or issuers over the stress period?

*Question 36:* What assumptions should OFHEO make about gains and losses on the sale of collateral for repurchase agreements?

*II. Interest Rate Risk*

Interest rate risk, associated primarily with the maintenance of a retained portfolio, caused the most serious losses ever experienced by the Enterprises. For a time during the early 1980's, Fannie Mae, which was then almost exclusively a portfolio institution, was insolvent on a mark-to-market basis.[33] (Freddie Mac focused much more completely on mortgage pass-through securities during that time period.) As did much of the thrift industry at the time, Fannie Mae funded long-term, low-yield, fixed-rate, single family mortgages with short-term liabilities; rising interest rates drove up funding costs, causing Fannie Mae to incur significant losses.

Since then, Fannie Mae and Freddie Mac (the latter has built a substantial retained portfolio over the past decade) have developed funding strategies that reduce their exposure to interest rate risk. To protect against rising rates, liabilities have been lengthened to match more closely the maturity of mortgage assets. When falling interest rates result in accelerated mortgage prepayments, callable debt structures now allow the Enterprises to retire some debt early or issue new debt to maintain more closely their desired net interest margin. Adjusting hedging strategies for adjustable-rate mortgage investments presents a more difficult problem.

The Enterprises have recently been building mortgage derivative portfolios that have an interest rate risk profile more complex than those of whole mortgages.

Interest rate risk also affects income from the Enterprises' securitization businesses. Float income—the return on invested mortgage principal and interest payments prior to the corresponding payment to investors—varies with the level of interest rates at which the Enterprises reinvest such funds. Interest rates affect prepayment rates, and changing prepayments affect float income at each Enterprise.

A number of issues related to the interest rate risk of the Enterprises are discussed below.

[31] Federal National Mortgage Association Charter Act, section 302(b)(2) and (5)(C) (12 U.S.C. 1717(b)(2) and (5)(C)), and Federal Home Loan Mortgage Corporation Act, section 305(a)(2) and (4)(C) (12 U.S.C. 1454(a)(2) and (4)(C)).

[32] ''S&P's Structured Finance Criteria,'' Standard & Poor's (1988).

[33] The market value of Fannie Mae's liabilities (primarily market-rate, short-term securities) exceeded the market value of its assets (primarily below market-rate residential mortgages).

A. Yield Curve Construction

The Act provides specific instructions concerning the ten-year CMT yield over the ten years of the stress test, but other points on the Treasury yield curve are important as well. The Treasury yield curve determines, directly or indirectly, the yields on adjustable-rate mortgages, the returns on non-mortgage investments and the costs of borrowing. The Act calls for Treasury yields of different maturities to be determined in a way that is ''reasonably related to historical experience and are judged reasonable by the Director.'' [34]

*Question 37:* How should OFHEO determine the remainder of the Treasury curve and apply the curve through the ten-year stress period?

*Question 38:* How should the other points on the yield curve change during the first year when the ten-year CMT yield is rising or falling?

*Question 39:* How, if at all, should those yields vary after the one-year period when the ten-year CMT yield has reached its maximum or minimum level?

B. Mortgage Prepayments—Interest Rate Risk

The financing of a mortgage portfolio presents one of the greatest challenges of asset/liability management. A portfolio manager can eliminate interest rate risk only if he or she issues liabilities with maturities, rate adjustments, and embedded options matching those of the mortgage assets. In a declining rate environment, should mortgages pay down more quickly than liabilities, new low-yield mortgages added to the portfolio will likely reduce the net interest margin; in a rising rate environment, if liabilities run off more quickly than the mortgage assets, the net interest margin will likely fall due to higher funding costs.

Since the Enterprises absorb the credit risk of MBS, MBS dealers and investors principally concern themselves with interest rate risk. The tremendous volume of MBS outstanding, and the great sensitivity of MBS value to interest rate movements and resulting prepayment rates, have resulted in a significant research emphasis on prepayments by Wall Street analysts. Although most Wall Street MBS pricing models focus on prepayments, these models are estimated based on mortgage termination data that do not distinguish prepayments from defaults. For the purpose of modeling interest rate risk, the distinction is irrelevant.

The section above titled ''Models of Default and Prepayment'' suggests an approach to the stress test that combines the simulation of defaults and prepayments in a joint multivariate model, making a termination model unnecessary. Use of a mortgage termination model for interest rate risk analysis runs the risk of generating implausible patterns of prepayments because, depending on the approach to default projections, defaults in some years of the stress period might approach or exceed total projected mortgage terminations.

*Question 40:* What are the relative merits of the alternative approaches, *e.g.*, a joint multivariate default/prepayment model versus a mortgage termination model, to modeling mortgage prepayments in the stress test?

C. Liabilities

The Enterprises' liabilities may take the form of bonds and notes with simple structures; so-called ''structured notes,'' possibly combined with interest rate swap, cap or floor contracts; and foreign currency denominated debt coupled with foreign exchange swap contracts. Many bonds and contracts incorporate call or cancellation options, respectively. Enterprise funding costs are affected by management decisions to retire debt or cancel derivative contracts prior to stated maturities, as well as decisions about the characteristics of debt issued and derivatives activities initiated during the stress period.

Even though the initial stress test involves a ''winddown'' of the Enterprises' businesses, decisions with respect to bond calls and derivatives contract cancellations must be simulated. The financing of mortgages purchased to fulfill contractual commitments may require the issuance of new liabilities and possibly the initiation of new derivatives contracts. The run-off of liabilities at a faster rate than assets may also require new issuances.

*Question 41:* What should be the decision rules that OFHEO applies in the stress test related to the exercise of bond calls and derivatives contract cancellations?

*Question 42:* What should be the characteristics of simulated liabilities issued by the Enterprises during the stress period, *e.g.*, maturities, option structure, and coupon structure?

*Question 43:* What are the implications for simulated liabilities of the pattern of interest rate movements modeled during the initial year of the stress period?

D. Yield Curve Volatility and Option Pricing

The Act states that the ten-year CMT yield will be held at a constant level for the last nine years of the stress period,[35] but remains silent on the volatility of the remainder of the Treasury yield curve. Theoretically, the historical volatility of the yield curve has some bearing on expectations of future volatility. Expectations of future volatility, in turn, are a determinant of the current value of a call option on debt.

*Question 44:* How does OFHEO implement the link between the volatility of the yield curve experienced during the stress test and the market's expectations of future volatility?

*Question 45:* What assumptions should OFHEO make about the speed with which the Enterprises adjust to changes in volatility during the stress period?

*Question 46:* If the actual volatility of yields experienced during the stress test reaches extraordinarily low levels, what assumptions should OFHEO make to ensure reasonable pricing and use of call options on new debt?

E. Enterprises' Costs of Borrowing

As any organization depletes its capital reserves, the organization's cost of borrowing increases due to its higher perceived risk. Spreads over Treasury securities might also be affected by other aspects of the stress period, including the sharp interest rate changes early in the period and the prolonged general economic weakness.

*Question 47:* What techniques should OFHEO use to project the Enterprises' borrowing costs? How should the stress test link capital levels and quality spreads (borrowing rates relative to Treasuries)?

*Question 48:* Should yields relative to Treasuries widen during the stress period in response to general interest rate changes or credit problems? If so, by how much should they widen?

F. Hedging Activities

Hedging activities associated with structured notes, which convert specific securities into a preferred debt structure, are addressed above under ''Liabilities.'' The Enterprises engage in other hedging activities to manage interest rate risk more generally. The Act provides that:

> Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, on the basis of available

[34] Section 1361(a)(2)(D) (12 U.S.C. 4611(a)(2)(D)).

[35] Section 1361(a)(2) (B) and (C) (12 U.S.C. 4611(a)(2) (B) and (C)).

information, to be consistent with the stress period.[36]

*Question 49:* How should OFHEO simulate gains and losses (other than those associated with counterparty failures) on derivative activities in the stress test?

G. Investment of Excess Cash

Under certain circumstances, simulation of the stress scenarios may require decision rules concerning the investment of excess cash. For example, in the stress test scenario where the ten year CMT yield falls, mortgage prepayments will increase. The proceeds from prepayments of mortgages in the retained portfolio may exceed the cost of retiring associated debt. Likewise, in the rising rate stress test scenario, mortgages will prepay more slowly than in other scenarios. Slower prepayments may lead to the receipt of more guarantee fee income than initially anticipated on the Enterprises sold portfolio because the mortgages remain outstanding longer than originally anticipated.

Since the Act does not permit the simulation of new business in the initial stress test model, any excess cash generated during the stress test period must be assumed to either be retained as cash or reinvested in an interest-bearing asset.

*Question 50:* What decision rules should govern the investment of excess cash during the stress period?

*Question 51:* What rate of interest should excess cash be assumed to earn?

*Question 52:* Should excess cash be assumed to earn a single rate or a weighted average rate, representing a range of possible investment choices?

H. Other Indexes and Yields

Values must be created for other indexes and yields, *e.g.*, the Federal Home Loan Bank Eleventh District Cost of Funds Index and the London Interbank Offer Rate, over the stress period in order to reasonably project liability costs, as well as amortization, prepayment, and default rates on affected adjustable rate mortgages. One reasonable approach might be for OFHEO to create equations that project these indexes based on their relationship to points on the Treasury yield curve and assumed market conditions consistent with the circumstances of the stress test.

*Question 53:* What techniques should be used to simulate the behavior of these indexes and yields?

[36] Section 1361(a)(4) (12 U.S.C. 4611(a)(4)).

*III. New Business and Other Considerations*

OFHEO's risk-based capital test must incorporate a number of decision rules to reflect management actions that would significantly affect the financial performance of the Enterprises during the stress period. Initially, the Act requires that OFHEO's stress test incorporate no new business for the Enterprises during the stress period other than the fulfillment of contractual commitments to purchase mortgages or issue securities.[37] The Act specifically states that:

> The characteristics of resulting mortgage purchases [and] securities issued * * * will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period.[38]

The Act also requires that characteristics of the stress period other than those discussed above in the ''Credit Risk'' and ''Interest Rate Risk'' sections (such as, for example, dividend policies and operating expenses) be determined by the Director, on the basis of available information, to be most consistent with the stress period.[39]

A. Commitments

At this time, the only ''new business'' OFHEO can assume during the stress period is the fulfillment of contractual commitments to purchase mortgages or issue new securities. As a regular business practice, the Enterprises enter into commitments to purchase mortgages for periods that may extend from a few weeks up to a year. The commitments specify underwriting and pricing criteria for the mortgages to be delivered. If the Enterprise intends to securitize the mortgages listed in the commitment, then the Enterprise will hedge the commitment at the time it is executed by selling the mortgages forward.

Often the seller/servicer that has agreed to sell to an Enterprise under a commitment has not yet originated the mortgages at the time the commitment is executed. When the seller/servicer actually delivers mortgages, their characteristics may differ from those specified in the original commitment.

*Question 54:* How should OFHEO define the term ''commitments''?

*Question 55:* On what basis, if any, should OFHEO simulate the fulfillment of outstanding commitments?

*Question 56:* What mix of product types and underwriting qualities should be assumed?

[37] Section 1361(a)(3) (12 U.S.C. 4611(a)(3)).

[38] *Id.*

[39] Section 1361(b)(2) (12 U.S.C. 4611(b)(2)).

*Question 57:* What delivery timing should be assumed?

*Question 58:* What assumptions should be made with regard to securitization versus retention in portfolio?

B. Dividend Policies

During the stress period, net income will fall, reducing cash available for distribution to shareholders. In such circumstances, Enterprise management might be expected to suspend dividends or reduce the dividend rate. However, Enterprise management may be reluctant to take such actions, because dividend reductions send a negative signal to investors and would be expected to depress the market price of Enterprise shares.

*Question 59:* Should OFHEO assume continuation of the present dividend policies of each Enterprise for the entire stress period?

*Question 60:* If OFHEO simulates a reduction in the dividend payout rate, at what point in the scenario should it take place?

*Question 61:* By how much should dividends be reduced if they are reduced?

C. Operating Expenses

The Act is silent on how operating expenses should be treated in the stress test, but OFHEO interprets the Act to require that OFHEO model operating expenses in a manner most consistent with the stress period. Operating expenses lower the Enterprises' earnings or increase their losses, and thereby reduce their capital. The major portion of operating expenses at each of the Enterprises consists of costs related to personnel, occupancy, and equipment. Each Enterprise is divided by business function, such as purchase of mortgages, credit analysis, and investment management. Each Enterprise has regional offices. The cessation of additional business at the commencement of the stress period (beyond the fulfillment of contractual obligations) creates conditions that would quickly eliminate some operations and gradually reduce others.

*Question 63:* How should OFHEO appropriately model operating expenses in the stress test?

*Question 64:* To what extent, if any, should operating expenses be disaggregated and treated in distinct categories?

*Question 65:* How, if at all, should the stress test distinguish between the Enterprises in their management of operating expenses during the stress period?

## Conclusion

OFHEO has identified and highlighted many of the significant issues that must be addressed in connection with development of the stress test and the associated risk-based capital regulation. OFHEO seeks comment on these and any additional issues that may be identified.

The development of the stress test and the risk-based capital regulation is one of the critical statutory responsibilities of OFHEO. In carrying out this responsibility, OFHEO is committed to a regulatory process that will provide the broadest possible range of opinions from the widest array of information sources for consideration during the regulatory process. The development of the stress test and the implementation of the risk-based capital regulation will provide regulatory and analytical standards and tools that will safeguard the financial safety and soundness of the Enterprises and in turn will ensure that the Enterprises continue to accomplish their public missions. Given the significance of this undertaking, OFHEO encourages all interested parties to analyze the issues raised in this ANPR and submit comments on the specific questions. OFHEO will thoroughly analyze and carefully consider all comments during the course of the development of the stress test and risk-based capital regulation.

Dated: February 2, 1995.

**Aida Alvarez,**

*Director, Office of Federal Housing, Enterprise, Oversight.*

[FR Doc. 95–3076 Filed 2–7–95; 8:45 am]

BILLING CODE 4220–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. ANM–106; Notice No. SC–95–2–NM]**

## Special Conditions: Raytheon Corporate Jets, Inc., Model Hawker 800 Airplanes, High-Intensity Radiated Fields

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

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

**SUMMARY:** This notice proposes special conditions for the Raytheon Corporate Jets, Inc., Model Hawker 800 airplanes equipped with modifications that install Garrett TFE731–5BR–1H engines and a mach trim system. The configuration of these airplanes will utilize new and revised electronic systems that perform functions critical to the safety of the airplane. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before March 27, 1995.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–106, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM–106. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–106.'' The postcard will be date stamped and returned to the commenter.

## Background

On February 7, 1994, Raytheon Corporate Jets, Inc., 3 Bishop Square, St. Albans Road West, Hatfield, Hertfordshire AL10 9NE, England, applied for a revision to type certificate number A3EU to add new engines and a mach trim system to the model Hawker 800 series airplanes currently included on that TC. This revised model Hawker 800 is a crusifix tail, low wing, 15 passenger business jet powered by two Garrett TFE 731–5BR–1H turbofan engines mounted on pylons extending from the aft fuselage. The engines will be capable of delivering 4,634 lbs. of max continuous thrust each and 4750 pounds of thrust on the operating engine for up to 5 minutes at automatic power reserve (APR) power.

## Type Certification Basis

Under the provisions of § 21.29 of the FAR, Raytheon must show, except as provided in § 25.2, that the revised Model Hawker 800 complies with the certification basis of record shown on TC Data Sheet A3EU for model Hawker 800 airplanes plus, for the engine and mach trim system installations, § 25.1316 as amended by Amendment 25–80, § 25.933 as amended by Amendment 25–40, § 25.934 as amended through Amendment 25–23, § 25.1309 as amended through Amendment 25–23, parts 34 and 36 of the FAR as amended through the latest amendment in effect at the time of certification of this revision to the TC and any additional equivalent safety findings made for this revision of the TC. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the model Hawker 800 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.29(a)(1)(ii) and § 21.17(a)(2).

Special conditions are initially applicable to the model for which they

are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The Model Hawker 800 airplanes with TFE731–5BR–1H engines incorporate a revised engine electronic control system and an electronic controlled mach trim system. These systems perform critical to safety of flight functions and may be vulnerable to high-intensity radiated fields external to the airplane.

**Discussion**

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the model Hawker 800 with TFE731–5BR–1H engines and a mach trim system. These special conditions require that electrical and electronic components that perform critical functions and are embodied in the mach trim system or TFE731–5BR–1H engine electronic control system be designed and installed to ensure that operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital electronic systems to HIRF must be established.

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

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

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

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

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

| Frequency | Peak (V/M) | Average (V/M) |
|---|---|---|
| 10 KHz–100 KHz | 50 | 50 |
| 100 KHz–500 KHz | 60 | 60 |
| 500 KHz–2000 KHz | 70 | 70 |
| 2 MHz–30 MHz | 200 | 200 |
| 30 MHz–70 MHz | 30 | 30 |
| 70 MHz–100 MHz | 30 | 30 |
| 100 MHz–200 MHz | 150 | 33 |
| 200 MHz–400 MHz | 70 | 70 |
| 400 MHz–700 MHz | 4,020 | 935 |
| 700 MHz–1000 MHz | 1,700 | 170 |
| 1 GHz–2 GHz | 5,000 | 990 |
| 2 GHz–4 GHz | 6,680 | 840 |
| 4 GHz–6 GHz | 6,850 | 310 |
| 6 GHz–8 GHz | 3,600 | 670 |
| 8 GHz–12 GHz | 3,500 | 1,270 |
| 12 GHz–18 GHz | 3,500 | 360 |
| 18 GHz–40 GHz | 2,100 | 750 |

As discussed above, the proposed special conditions would be applicable initially to certain components on Hawker 800 airplanes with TFE731–5BR engines and a mach trim system. Should Raytheon Corporate Jets, Inc. apply at a later date for a change to the type certificate to add or revise electrical or electronic equipment that performs critical functions or to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain design features on the Hawker 800 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

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

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

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Raytheon Hawker 800 series airplanes equipped with Garrett TFE731–5BR–1H turbo fan engines and electronically controlled mach trim system. These special conditions would apply only to electrical and electronic components that perform critical functions and are embodied in the mach trim system or TFE731–5BR–1H engine electronic control system.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Wash., on January 31, 1995.

**Darrell M. Pederson,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.*

[FR Doc. 95–3123 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 94–NM–240–AD]**

## Airworthiness Directives; Lockheed Model 382 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, that currently requires a revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. This action would require installation of certain valve housings for the propeller

governor on the outboard engines. This proposal is prompted by a report of a change that had been incorporated into the propeller governor of these airplanes during production, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. The actions specified by the proposed AD are intended to ensure that the airplane maintains adequate thrust decay characteristics in the event of critical engine failure during takeoff.

**DATES:** Comments must be received by April 6, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, FAA, Flight Test Branch, ACE–160, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–240–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On June 23, 1994, the FAA issued AD 94–14–09, amendment 39–8961 (59 FR 35236, July 11, 1994), applicable to certain Lockheed Model 382 series airplanes, to require a revision to the Airplane Flight Manual (AFM) to require takeoff operation in accordance with revised performance data. That action was prompted by a report of a change that had been incorporated into the propeller governor of these airplanes during production, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. The requirements of that AD are intended to ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway.

In the preamble to AD 94–14–09, the FAA indicated that the AFM revision required by that AD was considered to be only ''interim action'' until a design change in the propeller governor was developed to address the ground minimum control speed (Vmcg) characteristics. The FAA also indicated that, once such a design change was developed, approved, and available, the FAA would consider further rulemaking on this subject.

The manufacturer recently has advised the FAA that it has been unable to develop a new modification of the subject governors (which have servo-type valve housing assemblies, having part number 714325–2, –3, –5, –6, or –7) that would provide adequate thrust decay characteristics. However, the manufacturer has advised that propeller governors with valve housing assemblies having part number 714325–1, which were manufactured before the line production change, do provide adequate thrust decay characteristics. On the basis of the data presented, the FAA finds that installation of these valve housing assemblies having part number 714325–1 will ensure adequate thrust decay characteristics in the event of a critical engine failure during takeoff and, thus, will positively address the unsafe condition presented by fast thrust decay. This proposed rulemaking follows from that determination.

Since the problem associated with maintaining adequate thrust decay characteristics of the propeller when operating in an engine failure scenario is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–14–09 to require removal of any servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7 installed on any outboard engine, and replacement of those assemblies with part number 714325–1. Replacement would be required in accordance with Lockheed Document SMP–515C, Card No. CO–135. The proposed compliance time of 24 months is considered adequate to accomplish the replacement during normal maintenance schedules, and also is considered to be ample time for obtaining required parts. Installation of valve housing assemblies, having part number 714325–1, would constitute terminating action for the takeoff operation procedures required by AD 94–14–09; once the replacement is accomplished, the previously required AFM revision could be removed.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

There are approximately 112 Model 382, 382E, and 382G series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18

airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $90,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,628,640, or $90,480 per airplane.

The FAA has been advised that the only U.S. operator of Lockheed Model 382 series airplanes has already equipped half of its fleet (9 airplanes) with the valve housing assembly that would be required by this proposed rule. Therefore, the future economic cost of this rule on U.S. operators is now only $814,320.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8961 (59 FR 35236, July 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

**Lockheed:** Docket 94–NM–240–AD. Supersedes AD 94–14–09, Amendment 39–8961.

Applicability: Model 382, 382E, and 382G series airplanes; equipped with a servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7, installed on any outboard engine; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the airplane maintains adequate thrust decay characteristics in the event of critical engine failure during takeoff, accomplish the following:

(a) Within 60 days after August 10, 1994 (the effective date of AD 94–14–09, amendment 39–8961), revise the Limitations and Performance Data Sections of the FAA-approved Airplane Flight Manual (AFM) to include information specified in Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

(b) Within 24 months after the effective date of this AD, replace the servo-type valve housing assemblies having part number 714325–2, –3, –5, –6, or –7, with part number 714325–1, on the propeller governors installed on the outboard engines, in accordance with Lockheed Document SMP–515C, Card No. CO–135. Replacement of these assemblies with part number 714325–1, constitutes terminating action for the requirements of paragraph (a) of this AD; once the replacement is accomplished, the AFM revision may be removed.

**Note 2:** Propeller governors with servo-type valve housing assemblies having part number 714325–2, –3, –5, –6, or –7, may be retained or replaced with part number 714325–1 for use on the inboard engine positions.

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

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

Issued in Renton, Washington, on February 2, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95–3073 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 94–NM–221–AD]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections to detect cracks and/or corrosion of the girt bar support fitting at certain main entry doors; and repair or replacement of the support fitting. This proposal would also provide for various terminating actions for the repetitive inspections. This proposal is prompted by reports that, during scheduled deployment tests of main entry door slides, corrosion was found on the floor structure supports for the escape slides of the main deck entry doors on these airplanes. The actions specified by the proposed AD are intended to prevent such corrosion, which could result in separation of the escape slide from the lower door sill during deployment, and subsequently prevent proper operation of the escape slides at the main entry doors during an emergency.

**DATES:** Comments must be received by April 6, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–221–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–03, Attention: Rules Docket No. 94–M–21–D, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The FAA has received reports from operators that, during scheduled deployment tests of a main entry door slide, corrosion was found on the floor structure supports for the escape slides of the main deck entry doors on Boeing Model 747 series airplanes.

In three reported incidents, the escape slides disconnected from the lower door sill and fell to the ground. In all three incidents, the girt bar supports were found to have moderate to severe corrosion. In two cases, the fasteners that attach the serrated plate assembly to the girt bar supports were corroded and broken. One of these incidents occurred at Main Entry Door (MED) 2 and the other two incidents occurred at MED 5. These airplanes had accumulated 15 to 20 years of service since date of manufacture.

In three other reported incidents, corrosion was found on the support fitting and the fastener. The corrosion was so severe that the escape slide would have fallen off the airplane, if the slide had been deployed. Two of these incidents occurred at MED 1, and the other incident occurred at MED 4. These airplanes had accumulated 11 to 20 years of service since date of manufacture.

Additionally, four more reported incidents of corrosion were found on the girt bar supports at seven doors on six other airplanes. One of these incidents occurred at MED 2, two occurred at MED 3, three occurred at MED 4, and one occurred at MED 5. These airplanes had accumulated 9 to 18 years of service since date of manufacture.

Following these reports, the manufacturer conducted a structural review of all entry doors on Model 747 series airplanes. This review found that corrosion could occur at any main deck entry door. Each main entry door has two girt bar chock support fittings; when the escape slide is deployed, these fittings attach the escape slide to the sill of the MED. Corrosion on these fittings, if not detected and corrected in a timely manner, could result in separation of the escape slide from the lower door sill during deployment, which would prevent proper operation of the escape slides at the main entry doors during an emergency.

The FAA has reviewed and approved Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994, which describes procedures for repetitive detailed visual inspections to detect cracks and/or corrosion of the girt bar support fitting at MED's 1 through 5, inclusive; repair or replacement of the support fitting; and reinstallation of the threshold assembly. This service bulletin also describes procedures for replacing the support fittings with new support fittings having new fasteners; refinishing uncorroded support fittings; and removing the corrosion and refinishing corroded support fittings. When accomplished, these actions eliminate the need for the repetitive visual inspections. (The new support fitting has inserts of cadmium plated alloy steel that are less susceptible to corrosion.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive detailed visual inspections to detect cracks and/or corrosion of the girt bar support fitting at MED's 1 through 5, inclusive; repair or replacement of the support fitting; and reinstallation of the threshold assembly. The proposed AD would also require, under certain conditions, replacing the support fittings with new support fittings having new fasteners; refinishing uncorroded support fittings; and removing the corrosion and refinishing corroded support fittings. When accomplished, these latter actions would constitute terminating action for the repetitive visual inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice added to this final rule to clarify this requirement.

There are approximately 868 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 169 airplanes of U.S. registry would be affected by this proposed AD.

The proposed inspection of MED 1 would take approximately 81 work hours per door to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $4,860 per door.

The proposed inspection of MED's 2, 4, and 5 would take approximately 7 work hours per door to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $420 per door.

The proposed inspection of MED 3 would take approximately 13 work hours per door to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $780 per door.

The proposed replacement of both support fittings would take approximately 37 work hours per door to accomplish, at an average labor rate of $60 per work hours. Based on these figures the total cost impact of the proposed replacement on U.S. operators is estimated to be $2,200 per door.

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket 94–M–21–D.

Applicability: Model 747 series airplanes; line numbers 1 through 868 inclusive, excluding freighters and special freighters; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion on girt bar support fittings, which could result in separation of the escape slide from the lower door sill during deployment, and subsequently prevent operation of the escape slides at the main entry doors during an emergency, accomplish the following:

(a) For airplanes equipped with Main Entry Door (MED) 1: Prior to the accumulation of 16 years of service since date of manufacture of the airplane, or within 15 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks and/or corrosion of the girt bar support fitting at the left and right MED 1, in accordance with Boeing Service Bulletin 747–3A2378, Revision 1, dated March 10, 1994.

(b) If no cracks or corrosion is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD in accordance with Boeing Service Bulletin 747–3A2378, Revision 1, dated March 10, 1994.

(1) Install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (b) of this AD. Or

(2) Reinstall the threshold assembly with corrosion resistant fasteners, in accordance with the service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 6 years.

(c) If any crack is found during the inspection required by paragraph (a) of this AD, prior to further flight, install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with Boeing Service Bulletin 747–3A2378, Revision 1, dated March 10, 1994. After these actions are accomplished, no further action is required by paragraph (c) of this AD.

(d) If any corrosion is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (d)(1) or (d)(2) of this AD, in accordance with Boeing Service Bulletin 747–3A2378, Revision 1, dated March 10, 1994.

(1) Install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (d) of this AD. Or

(2) Blend out corrosion in accordance with the service bulletin.

(i) If blend out of corrosion is beyond 10 percent of original thickness or any crack is found during accomplishment of the blend out procedures, install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (d) of this AD.

(ii) If blend out of corrosion does not exceed 10 percent of original material thickness, install the repaired fitting with new fasteners in accordance with the service bulletin, and accomplish either paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD:

(A) Install a new fitting with new fasteners, and reinstall threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (d) of this AD. Or

(B) Reinstall the threshold assembly with corrosion resistant fasteners in accordance with the service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 6 years.

(e) For airplanes equipped with Main Entry Doors (MED) 2, 4, and/or 5: Prior to the accumulation of 10 years of service since date of manufacture of the airplane or within 15 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks and/or

corrosion of the girt bar support fitting at the left and right MED 2, 4, and 5, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994.

(f) If no cracks or corrosion is found during the inspection required by paragraph (e) of this AD, prior to further flight, accomplish either paragraph (f)(1) or (f)(2) of this AD, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994.

(1) Reinstall the serrated plate assembly and the girt bar floor fitting with corrosion resistant fasteners, in accordance with the service bulletin. Repeat the inspection required by paragraph (e) of this AD thereafter at intervals not to exceed 6 years. Or

(2) Remove the inspected fitting and reinstall it with a new coat of primer, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (f) of this AD.

(g) If any crack is found during the inspection required by paragraph (e) of this AD, prior to further flight, install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994. After these actions are accomplished, no further action is required by this paragraph of this AD.

(h) If any corrosion is found during the inspection required by paragraph (e) of this AD, prior to further flight, accomplish either paragraph (h)(1) or (h)(2) of this AD, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994.

(1) Install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (h) of this AD. Or

(2) Blend out corrosion in accordance with the service bulletin.

(i) If blend out of corrosion is beyond 10 percent of original thickness or any crack is found during accomplishment of the blend out procedures, install a new fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (h) of this AD.

(ii) If blend out of corrosion does not exceed 10 percent of original material thickness, install repaired fitting with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (h) of this AD.

(i) For airplanes equipped with Main Entry Door (MED) 3: Prior to the accumulation of 16 years of service since date of manufacture of the airplane, or within 15 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks and/or corrosion of the girt bar support fitting at the left and right MED 3, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994.

(j) If no cracks or corrosion is found during the inspection required by paragraph (i) of this AD, prior to further flight, accomplish either paragraph (j)(1) or (j)(2) of this AD in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994.

(1) Remove inspected angles and reinstall it with a new coat of primer, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by this paragraph (j) of this AD. Or

(2) Reinstall the corner scuff plate and the threshold apron with corrosion resistant fasteners, in accordance with the service bulletin. Repeat the inspection required by paragraph (i) of this AD thereafter at intervals not to exceed 6 years.

(k) If any crack is found during the inspection required by paragraph (i) of this AD, prior to further flight, install the new angles with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994. After these actions are accomplished, no further action is required by this paragraph of this AD.

(l) If any corrosion is found during the inspection required by paragraph (i) of this AD, prior to further flight, accomplish either paragraph (l)(1) or (l)(2) of this AD, in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994.

(1) Install the new angles with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (l) of this AD. Or

(2) Blend out corrosion in accordance with the service bulletin.

(i) If blend out of corrosion is beyond 10 percent of original thickness or any crack is found during accomplishment of the blend out procedures, install the new angles with new fasteners, and reinstall threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (l) of this AD.

(ii) If blend out of corrosion does not exceed 10 percent of original material thickness, install the repaired angles with new fasteners, and reinstall the threshold assembly with new corrosion resistant fasteners, in accordance with the service bulletin. After these actions are accomplished, no further action is required by paragraph (l) of this AD.

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

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

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

Issued in Renton, Washington, on February 2, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95–3074 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 94–NM–222–AD]**

## Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require repetitive Tap Test inspections to detect debonding of the elevator skins, and corrective actions, if necessary. This proposal is prompted by a report that a debonded area of the upper skin of an elevator had been discovered during a visual inspection. The actions specified by the proposed AD are intended to prevent the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, adversely affect the structural integrity of the elevator.

**DATES:** Comments must be received by March 22, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–222–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that it has received a report indicating that a debonded area was discovered on the upper skin of the elevator on one airplane during a routine visual inspection. When the external skin was cut to perform a repair of the debonded area, water was discovered in the elevator. The presence of water in carbon fiber elevators can cause debonding of the elevator skins. This condition, if not corrected, could result in degradation of the structural integrity of the elevator by causing stiffness of the elevator and by adversely affecting the capability of the elevator to transfer loads.

Airbus has issued Service Bulletins A310–55–2016 (for Model A310 series airplanes) and A300–55–6014 (for Model A300–600 series airplanes), both dated September 10, 1993, which describe procedures for repetitive thermographic inspections to detect water in the elevator. These service bulletins also provide procedures to protect and repair debonded areas of the elevator. The DGAC classified both service bulletins as mandatory and issued French airworthiness directive CN 94–184–157(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

The French airworthiness directive also mandates the accomplishment of repetitive Tap Test inspections to detect disbonding of the elevator skins. Procedures for performing these Tap Test inspections are described in Airbus Model A310 and A300–600 Nondestructive Testing Manuals (NTM).

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive Tap Test inspections to detect debonding of the elevator skins, and corrective actions, if necessary. These actions would be required to be accomplished in accordance with the NTM.

Additionally, this proposal also would require repetitive thermographic inspections of the elevator to detect trapped water if certain amounts of debonding are detected. These inspections, and necessary repair, would be required to be accomplished in accordance with the Airbus service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this.

This proposed AD also would require that certain water-affected areas be repaired in accordance with a method approved by the FAA. Accomplishment of a thermographic inspection and correction of any discrepancy, would terminate the repetitive Tap Test inspections, but would continue to require repetitive thermographic inspections.

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,500, or $300 per airplane, per inspection cycle.

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**39.13 [Amended]**

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

**Airbus:** Docket 94–NM–222–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 4805 has been installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, could affect the structural integrity of the elevator, accomplish the following:

(a) Perform a Tap Test inspection to detect debonding of the elevator skins, in accordance with the procedures described in the Airbus Model A300–600 or A310 Nondestructive Test Manual (NTM), as applicable, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 5,000 total landings on the elevator, or within 5 years after the first landing on the elevator, whichever occurs later. Or

(2) Within 3 months after the effective date of this AD.

(b) If no debonding is detected, repeat the Tap Test inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 landings or 3 months, whichever occurs first.

(c) If debonding is detected, the largest debonded area is smaller than 400 $cm^2$, and the distance between two debonded areas is equal to or greater than 2.5 times the diameter of the largest defect: Repeat the Tap Test inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 250 landings or every 3 months, whichever occurs first.

(d) If the debonding detected is 400 $cm^2$ or larger, prior to further flight, perform a thermographic inspection to detect water in the elevator, in accordance with Airbus Service Bulletin A310–55–2016 (for Model A310 series airplanes) or Airbus Service Bulletin A300–55–6014 (for Model A300–600 series airplanes), both dated December 1, 1990, as applicable. Prior to further flight, correct any discrepancy in accordance with the applicable service bulletin. Repeat the thermographic inspections thereafter at intervals not to exceed 4,500 landings, or every five years, whichever occurs first, in accordance with the applicable service bulletin.

(e) If any water-affected area detected during any inspection required by this AD is greater than 40,000 sq. mm. in size, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) Accomplishment of the thermographic inspections, as specified in paragraph (d) of this AD, constitutes terminating action for the repetitive tap test inspections required by paragraph (a) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on February 2, 1995.

**Darrell M. Pederson,**

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

[FR Doc. 95–3075 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[IA–17–94; EE–36–94]**

**RIN 1545–AS74**

## Payment by Employer of Expenses for Club Dues, Meals and Entertainment, and Spousal Travel; Correction

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

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking, which was published in the **Federal Register** for Friday, December 16, 1994 (59 FR 64909). The proposed regulations relate to reimbursements and other expense allowance arrangements, working condition fringe benefits, expenses for club dues, spousal travel, and business meals and entertainment that are disallowed as a deduction to the employer.

**FOR FURTHER INFORMATION CONTACT:** Concerning regulations under sections 62 and 132, David N. Pardys, (202) 622–6040; concerning regulations under section 274, John T. Sapienza, Jr., (202) 622–4920; and concerning the hearing, Christina Vasquez, (202) 622–7190, (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The notice of proposed rulemaking that is the subject of these corrections is under section 62(c), 132(d), and 274 of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed rulemaking contains typographical errors that are in need of correction.

### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 94–30877, is corrected as follows:

1. On page 64909, in the preamble following the **ACTION** caption, the language is corrected as follows:

''**ACTION:** Notice of proposed rulemaking and notice of public hearing.''.

2. On page 64909, in the preamble following the **DATES** caption, the paragraph is corrected as follows:

''**DATES:** Written comments must be received by March 24, 1995. Requests to appear and outlines of oral comments to be presented at the public hearing scheduled for April 14, 1995, at 10:00 a.m. must be received by March 24, 1995.''.

3. On page 64909, in the preamble following the **ADDRESSES** caption, the paragraph is corrected as follows:

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (IA–17–94; EE–36–94), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. In the alternative, submissions may be hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to: CC:DOM:CORP:T:R (IA–17–94; EE–36–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. The public hearing scheduled for April 14, 1995, will be held in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, N.W., Washington, D.C.''.

4. On page 64909, in the preamble following the paragraph heading ''Explanation of Provisions'', column 3, first full paragraph, line 3, the language ''employee to an employee may be'' is corrected to read ''employer to an employee may be''.

5. On page 64910, in the preamble following the paragraph heading ''Explanation of Provisions'', column 1 , first full paragraph, line 10, the word ''provide'' is corrected to read ''preclude''.

6. On page 64910, in the preamble following the paragraph heading ''Explanation of Provisions'', column 1, first full paragraph, third line from the bottom of the paragraph, the section ''274(M)(3)'' is corrected to read ''274(m)(3)''.

7. On page 64911, column 1, § 1.132–5, paragraph (s)(2), *Example 2.*, second line from the bottom of the paragraph, the language ''entire of the club membership) in gross'' is corrected to read ''entire value of the club membership) in gross''.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95–3106 Filed 2–7–95; 8:45 am]

BILLING CODE 4830–01–P

## 26 CFR Part 1

**[EE–41–86]**

**RIN 1545–AI52**

## Exempt Organizations Not Required To File Annual Returns: Integrated Auxiliaries; Correction

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

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to the notice of proposed rulemaking [EE–41–86], which was published in the **Federal Register** for Thursday, December 15, 1994 (59 FR 64633). The proposed rulemaking relates to regulations that exempt certain tax-exempt organizations from filing information returns.

**FOR FURTHER INFORMATION CONTACT:** Terri Harris or Paul Accettura, (202) 622–6070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The proposed regulations that are the subject of this correction are under section 6033 of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed rulemaking contains a typographical error that is in need of correction.

### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 94–30587, is corrected as follows:

On page 64634, § 1.6033–2, column 3, the section heading of § 1.6033–2 is corrected as follows:

**''§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).''.**

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95–3103 Filed 2–7–95; 8:45 am]

BILLING CODE 4830–01–P

## 26 CFR Part 1

**[EE–45–94]**

**RIN 1545–AS94**

## Self-Employment Tax Treatment of Members of Certain Limited Liability Companies; Correction

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

**ACTION:** Correction to notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains a correction to the notice of proposed rulemaking and notice of public hearing [EE–45–94], which was published in the **Federal Register** for Thursday, December 29, 1994 (59 FR 67253). The proposed regulations concern the treatment of members of certain limited liability companies.

**FOR FURTHER INFORMATION CONTACT:** Concerning the definition of manager, D. Lindsay Russell, (202) 622–3050; concerning other aspects of the regulation, Marie Cashman, (202) 622–6040; concerning submissions and the hearing, Carol Savage, (202) 622–8452.

**SUPPLEMENTARY INFORMATION:**

### Background

The proposed regulations that are the subject of this correction are under section 1402 of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contain a typographical error that is in need of correction.

### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing which is the subject of FR Doc. 94–31434, is corrected as follows:

On page 67254, in the preamble under the paragraph heading ''Comments and Public Hearing'', column 2, paragraph 3, last line, the date ''March 29, 1995'' is corrected to read ''May 25, 1995''.

**Cynthia E. Grigsby**

*Chief, Regulations Unit Assistant Chief Counsel (Corporate).*

[FR Doc. 95–3104 Filed 2–7–95; 8:45 am]

BILLING CODE 4830–01–P

## 26 CFR Part 53

**[EE–56–94]**

**RIN 1545–AT03**

## Excise Tax on Self-Dealing by Private Foundations; Correction

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

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to the notice of proposed rulemaking [EE–56–94], which was published in the **Federal Register** for

Tuesday, January 3, 1995 (60 FR 82). The proposed regulations define self-dealing by private foundations.

**FOR FURTHER INFORMATION CONTACT:** Terri Harris or Paul Accettura at (202) 622–6070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

The proposed regulations that are the subject of this correction are under section 4941 of the Internal Revenue Code.

## Need for Correction

As published, the notice of proposed rulemaking contains a typographical error that is in need of correction.

## Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking that is the subject of FR Doc. 94–31666, is corrected as follows:

On page 83, column 2, § 53.4941(d)-2, paragraph (f)(3)(ii), line 11, the language ''pursuant to this paragraph (f)(3)(ii).'' is corrected to read ''pursuant to this paragraph (f)(3).''.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95–3105 Filed 2–7–95; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 199

**RIN 0720–AA21**

**[DoD 6010.8–R]**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Uniform HMO Benefit; Special Health Care Delivery Programs

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes requirements and procedures for implementation of the TRICARE Program, the purpose of which is to move toward a comprehensive managed health care delivery system in military medical treatment facilities and CHAMPUS. Principal components of the proposed rule include: establishment of a comprehensive enrollment system; creation of a triple option benefit, including a Uniform HMO Benefit required by law; a series of initiatives to coordinate care between military and civilian delivery systems, including Resource Sharing Agreements, Health Care Finders, PRIMUS and NAVCARE Clinics, and new prescription pharmacy services; and a consolidated schedule of charges, incorporating steps to reduce differences in charges between military and civilian services. This proposed rule also includes provisions expanding use of nonavailability statement authorities to require use of designated civilian network providers for inpatient hospital care, establishing a special civilian provider program authority for active duty dependents overseas, and implementing revisions to the Managed Care Program of the former Public Health Service hospitals that now function as Uniformed Services Treatment Facilities. The TRICARE Program is a major reform of the Military Health Services System that will improve services to beneficiaries and help sustain the system during this period of significant budgetary limitations.

**DATES:** Written comments must be received on or before April 10, 1995.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

**FOR FURTHER INFORMATION CONTACT:** Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:**

## I. Overview of the TRICARE Program

The medical mission of the Department of Defense is to provide, and maintain readiness to provide, medical services and support to the armed forces during military operations, and to provide medical services and support to members of the armed forces, their family members, and others entitled to DoD medical care.

Under the current Military Health Services System (MHSS), CHAMPUS-eligible beneficiaries may receive care in the direct care system (that is, care provided in military hospitals or clinics) or seek care from civilian health care providers; the government shares in the cost of such civilian care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), or for some beneficiaries, the Medicare program. The substantial majority of care for military beneficiaries is provided within catchment areas of inpatient military treatment facilities (MTFs), a catchment area being roughly defined as the area within a 40-mile radius around an MTF.

Recently DoD has embarked on a new program, called TRICARE, which will improve the quality, cost, and accessibility of services for its beneficiaries. Because of the size and complexity of the military health services system, TRICARE is being phased over a period of several years. The principal mechanisms for the implementation of TRICARE are the designation of the commanders of selected military medical centers as Lead Agents for 12 TRICARE regions across the country, operational enhancements to the Military Health Services System, and the procurement of managed care support contracts for the provision of civilian health care services in those regions.

Sound management of the MHSS requires a great degree of coordination between the direct care system and CHAMPUS-funded civilian care, which, unfortunately, has not always been present. The TRICARE Program recognizes that ''step one'' of any process aimed at improving management is to identify the beneficiaries for whom the health program is responsible. Indeed, the dominant feature in some private sector health plans, enrollment of beneficiaries in their respective health care plans, is an essential element. This proposed rule moves toward establishment of a basic structure of health care enrollment for the MHSS. Under this structure, all health care beneficiaries become enrolled in TRICARE and classified into one of five enrollment categories:

1. Active duty members, all of whom are automatically enrolled in TRICARE Prime, an HMO-type option;
2. TRICARE Prime enrollees, who (except for active duty members) must be CHAMPUS eligible;
3. TRICARE Standard enrollees, which covers all CHAMPUS-eligible beneficiaries who do not enroll in TRICARE Prime or another managed care program affiliated with TRICARE;
4. Medicare-eligible beneficiaries, who, although not eligible for TRICARE Prime, may participate in many features of TRICARE; and
5. Participants in other managed care programs affiliated with TRICARE.

The second major feature of the TRICARE Program will be the establishment of a triple option benefit. CHAMPUS-eligible beneficiaries will be offered three options: They may enroll to receive health care in an HMO-type program called ''TRICARE Prime;'' they may use the civilian preferred provider

network on a case-by-case basis, under ''TRICARE Extra;'' or they may remain in the standard CHAMPUS benefit plan, called ''TRICARE Standard.'' Enrollees in Prime will obtain most of their care within the network, and pay substantially reduced CHAMPUS cost shares when they receive care from civilian network providers. Enrollees in Prime will retain freedom to utilize non-network civilian providers, but they will have to pay cost sharing considerably higher than under Standard CHAMPUS if they do so. Beneficiaries who choose not to enroll in TRICARE Prime will preserve their freedom of choice of provider for the most part by remaining in TRICARE Standard. These beneficiaries will face standard CHAMPUS cost sharing requirements, except that their coinsurance percentage will be lower when they opt to use the preferred provider network under TRICARE Extra. All beneficiaries continue to be eligible to receive care in military facilities. Active duty dependents who enroll in TRICARE Prime will have a priority over other beneficiaries.

A third major feature of the TRICARE program is a series of initiatives, affecting all beneficiary enrollment categories, designed to coordinate care between military and civilian health care systems. Among these is a program of resource sharing agreements, under which a TRICARE contractor provides to a military treatment facility, personnel and other resources to increase the availability of services from military facilities and providers. Another initiative is establishment of Health Care Finders, which are administrative offices to facilitate referrals to appropriate services in the military facility or civilian provider network. In addition, integrated quality and utilization management services for military and civilian sector providers will be instituted. Still another initiative is establishment of special pharmacy programs for areas affected by base realignment and closure actions. These pharmacy programs will include special eligibility for some Medicare-eligible beneficiaries. TRICARE also makes permanent authority for PRIMUS and NAVCAREClinics, which are dedicated contractor-owned and operated clinics. These initiatives will have a major impact on military health care delivery systems, improving services for all beneficiary enrollment categories.

The fourth major component of TRICARE is the implementation of a consolidated schedule of charges, incorporating steps to reduce differences in charges between military and civilian services. In general, the TRICARE Program reduces out-of-pocket costs for civilian sector care. For example, the current CHAMPUS cost sharing requirements for outpatient care for active duty dependents include a deductible of $150 per person or $300 per family ($50/$100 for dependents of sponsors in pay grades E–4 and below) and a copayment of 20 percent of the allowable cost of the services. Under TRICARE Prime, which incorporates the ''Uniform HMO Benefit,'' these cost sharing requirements will be replaced by a standard charge for most outpatient visits of $12.00 per visit, or $6.00 per visit for dependents of E–4 and below sponsors.

For retirees, their dependents and survivors, the current deductible of $150 per person or $300 per family and 25 percent cost sharing will also be replaced by a standard charge, which is likewise $12.00 for most outpatient visits.

Beneficiaries who are not under TRICARE Prime will also have significant opportunities to reduce expected out-of-pocket costs under CHAMPUS. These opportunities include increased availability of MTF services by virtue of resource sharing agreements, the new special pharmacy programs, and access to PRIMUS and NAVCARE Clinics.

With respect to military hospitals, for retirees, their dependents, and survivors, consideration may be given in the future to establishment of nominal per-visit fees, for some or all retirees, their family members, and survivors, and for some or all types of services for those beneficiaries. Fees would be considered to help control demand for military facility care, to free up capacity and reduce waiting times, and lower the costs of health care.

A user fee can be structured in many different ways, for example, exempting lower income segments of the covered population. Most importantly, the motivation for a fee is to encourage the more efficient provision of lower cost health care, and not to produce budgetary savings. Accordingly, analysis of alternatives would be based on the assumption that revenue produced by a user fee will be allocated to other benefits or quality of life programs. When this issue is considered for possible implementation in fiscal year 1998, if the Department decides to establish a nominal fee for some or all outpatient services provided to some or all retirees, their family members, and survivors, a proposed rule will then be issued for public comment. Again, it should be noted that this suggestion of a possible outpatient fee does not include active duty service members or their family members.

Taken as a whole, the TRICARE Program is a major reform of the Military Health Services System—one that will accomplish the transition to a comprehensive managed health care system that will help to achieve DoD's medical mission into the next century.

## II. Provisions of Proposed Rule Regarding the TRICARE Program

These regulatory changes are being published as an amendment to the 32 CFR part 199 because the operating details of CHAMPUS will be altered significantly. Our regulatory approach is to leave the existing CHAMPUS rules largely intact and to create new §§ 199.17 and 199.18 to describe the TRICARE Program and the uniform HMO benefit. The major provisions of the proposed new § 199.17 regarding the TRICARE Program are summarized below.

### *A. Establishment of the TRICARE Program* (proposed § 199.17(a))

This paragraph introduces the TRICARE Program, and describes its purpose, statutory authority, and scope. It is explained that certain usual CHAMPUS and MHSS rules do not apply under the TRICARE Program, and that implementation of the Program occurs in a specific geographic area, such as a local catchment area or a region. Public notice of initiation of a Program will include a notice published in the **Federal Register**.

With respect to statutory authority, major statutory provisions are title 10, U.S.C. sections 1099 (which calls for a health care enrollment system), 1097 (which authorizes alternative contracts for health care delivery and financing), and 1096 (which allows for resource sharing agreements). Significantly, the National Defense Authorization Act for Fiscal Year 1995 amended section 1097 to authorize the Secretary of Defense to provide for the coordination of health care services provided pursuant to any contract of agreement with a civilian managed care contractor with those services provided in military medical treatment facilities. This amendment set the stage for many features of TRICARE, including initiatives to improve coordination between military and civilian health care delivery components and the consolidated schedule of beneficiary charges.

### *B. Triple Option* (proposed § 199.17(b))

This paragraph presents an overview of the triple option feature of the TRICARE Program. Most beneficiaries are offered enrollment in the TRICARE

Prime Plan, or ''Prime.'' They are free to choose to enroll to obtain the benefits of Prime, or not to enroll and remain in the TRICARE Standard Plan, or ''Standard,'' with the option of using the preferred provider network under the TRICARE Extra Plan, or ''Extra.'' When the TRICARE Program is implemented in an area, active duty members will be enrolled in Prime.

*C. Eligibility for Enrollment in Prime* (proposed § 199.17(c))

This paragraph describes who may enroll in the Program. All active duty members are automatically enrolled; all CHAMPUS-eligible beneficiaries may enroll. Since it is likely that priorities for enrollment will be necessary owing to limited availability of Prime, the order of priority for enrollment will be as follows: First priority will be active duty members; second priority will be active duty family members; and third priority will be CHAMPUS-eligible retirees, family members of retirees, and survivors. At this time, TRICARE Prime will not offer enrollment to non-CHAMPUS-eligible beneficiaries.

*D. Health Benefits Under Prime* (proposed § 199.17(d))

This paragraph states that the benefits established for the Uniform HMO Benefit option (see § 199.18, Uniform HMO Benefit option) are applicable to CHAMPUS eligible enrollees in TRICARE Prime.

Under TRICARE, all enrollees in Prime and all beneficiaries who do not enroll remain eligible for care in MTFs. Active duty family members who enroll in TRICARE Prime would be given priority for MTF access over non-enrollees; priorities for other categories of beneficiary would be unaffected by their enrollment. Regarding civilian sector care, active duty member care will continue to be arranged as needed and paid for through the supplemental care program.

*E. Health Benefits Under Extra* (proposed § 199.17(e))

This paragraph describes the availability of the civilian preferred provider network under Extra. When Extra is used, CHAMPUS cost sharing requirements will be reduced. See Table 2 following the preamble for a comparison of TRICARE Standard, TRICARE Extra, and TRICARE Prime cost sharing requirements.

*F. Health Benefits Under Standard* (proposed § 199.17(f))

This paragraph describes health benefits for beneficiaries who opt to remain in Standard. Broadly, participants in Standard maintain their freedom of choice of civilian provider under CHAMPUS (subject to nonavailability statement requirements), and face standard CHAMPUS cost sharing requirements, except when they take advantage of the preferred provider network under Extra. The CHAMPUS benefit package applies to Standard participants.

*G. Coordination With Other Health Care Programs* (proposed § 199.17(g))

This paragraph provides that, for beneficiaries enrolled in managed health care programs not operated by DoD, DoD may establish a contract or agreement with the other managed health care program for the purpose of coordinating beneficiary entitlements under the other program and the military health services system. This potentially includes any private sector health maintenance organization (HMO) or competitive medical plan, and any Medicare HMO. Any contract or agreement entered into under this paragraph may integrate health care benefits, delivery, financing, and administrative features of the other managed care plan with some or all of the features of the TRICARE Program. This paragraph is based on 10 U.S.C. section 1097(d), as amended by section 714 of the National Defense Authorization Act for Fiscal Year 1995.

*H. Resource Sharing Agreements* (proposed § 199.17(h))

This paragraph provides that military treatment facilities may establish resource sharing agreements with the applicable managed care support contractors for the purpose of providing for the sharing of resources between the two parties. Internal and external resource sharing agreements are authorized. Under internal resource sharing agreements, beneficiary cost sharing requirements are the same as in military facilities. Under internal or external resource sharing agreements, a military treatment facility commander may authorize the provision of services pursuant to the agreement to Medicare-eligible beneficiaries, if this will promote the most cost-effective provision of services under the TRICARE Program.

*I. Health Care Finder* (proposed § 199.17(i))

This paragraph establishes procedures for the Health Care Finder, an administrative office that assists beneficiaries in being referred to appropriate health care providers, especially the MTF and civilian network providers. Health Care Finder services are available to all beneficiaries.

*J. General Quality Assurance, Utilization Review, and Preauthorization Requirements* (proposed § 199.17(j))

This paragraph emphasizes that all requirements of the CHAMPUS basic program relating to quality assurance, utilization review, and preauthorization of care apply to the CHAMPUS component of Prime, Extra and Standard. These requirements and procedures may also be made applicable to military facility services.

*K. Pharmacy Network Services in Base Realignment and Closure Sites* (proposed § 199.17(k))

This paragraph establishes two special pharmacy programs, a retail pharmacy network program and a mail service pharmacy program. This proposal is made with consideration of the existing mail service pharmacy demonstration, under which features of the permanent, nationwide program are being tested at a number of sites. Proceeding to solicit public comment on design features at this point, prior to completion of the demonstration, will enable us to move most expeditiously to establish the nationwide program in the future.

An important aspect of the mail service and retail pharmacy programs is that, under the authority of section 702 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, there is a special rule regarding eligibility for prescription services. The special rule is that Medicare-eligible beneficiaries, who are normally ineligible for CHAMPUS, are under certain special circumstances eligible for the pharmacy programs. The special circumstances are that they live in an area adversely affected by the closure of a military medical treatment facility. A provision of the National Defense Authorization Act for Fiscal Year 1995 additionally provides eligibility for Medicare eligible beneficiaries who demonstrate that they had been reliant on a former military medical treatment facility for pharmacy services.

Under the proposed rule, the area adversely affected by the closure of a facility is established as the catchment area of the treatment facility that closed. The catchment area is the existing statutory designation of the geographical area primarily served by a military hospital. The catchment area is defined in law as ''the area within approximately 40 miles of a medical facility of the uniformed services.'' Pub. L. 100–180, sec. 721(f)(1), 10 U.S.C.A.

1092 note. This is also the geographical basis in the law for nonavailability statements that authorize CHAMPUS beneficiaries who live within areas served by military hospitals to obtain care outside the military facility. 10 U.S.C. 1079(a)(7). Because the purpose of the special eligibility rule for Medicare-eligible beneficiaries is to replace the pharmacy services lost as a consequence of the base closure, and because the 40-mile catchment area is the only geographical area designation established in law to describe the beneficiaries primarily served by a military medical facility, we believe it most appropriate to adopt the established 40-mile catchment area for purposes of the applicability of the special eligibility rule for pharmacy services. Thus, under the proposed rule, Medicare-eligible beneficiaries who live within the established 40-mile catchment area of a treatment facility that closed are eligible to use the pharmacy programs if available in that area.

There are several noteworthy special rules regarding the area that will be considered adversely affected by the closure of a military treatment facility. First, 40-mile catchment area generally will apply in the case of the closure of a military clinic, as it does in the case of the closure of a hospital. Recognizing that there may be clinic closure cases involving very small clinics that were not providing any significant amount of pharmacy services to retirees and their dependents, these cases will not be considered to be areas adversely affected by the closure of a medical treatment facility. The reason for this is simply that if the facility was not providing a significant amount of services, its closure will not have a noteworthy adverse affect in the area. Another circumstance in which a facility closure will not be considered to have an adverse affect on an area is if the area is also within the catchment area of another military medical treatment facility that remains open and available to the beneficiaries.

The Director, Office of CHAMPUS may establish other procedures for the effective operation of the pharmacy programs, dealing with issues such as encouragement of use of generic drugs for prescriptions and use of appropriate drug formularies, as well as establishment of requirements for demonstration of past reliance on a military medical treatment facility for pharmacy services.

*L. PRIMUS and NAVCARE Clinics* (proposed § 199.17(l))

The proposed rule would add a new § 199.17(l). Under the authority of 10 U.S.C. sections 1074(c) and 1097, this section would authorize PRIMUS and NAVCARE Clinics, which have operated to date under demonstration authority. Because these contractor owned and operated clinics have increased beneficiariy access to care and become very popular with beneficiaries, this provision will make permanent the PRIMUS and NAVCARE Clinic authority.

As under the demonstration project, PRIMUS and NAVCARE Clinics will function as extensions of military treatment facilities. As such, all beneficiaries eligible for care in military treatment facilities (including active duty members, Medicare-eligible beneficiaries, and other non-CHAMPUS eligible beneficiaries) are eligible to use PRIMUS and NAVCARE Clinics. For PRIMUS and NAVCARE Clinics established prior to October 1, 1994, CHAMPUS deductibles and copayments will not apply. Rather, military hospital policy regarding beneficiary charges will apply. For PRIMUS and NAVCARE Clinics established after September 30, 1994, the provisions of the Uniform HMO Beneift regarding out patient costsharing will apply (see proposed § 199.18(d)(3)). Other CHAMPUS rules and procedures, such as coordination of benefits requirements will apply. The Director, OCHAMPUS may waive or modify CHAMPUS regulatory requirements in connection with the operation of PRIMUS and NAVCARE Clinics.

*M. Consolidated Schedule of Beneficiary Charges* (proposed § 199.17(m))

This paragraph establishes a consolidated schedule of beneficiary charges applicable to health care services under TRICARE for Prime enrollees (other than active duty members), Standard enrollees, and Medicare-eligible beneficiaries. The schedule of charges is summarized at Table 1, following the preamble. As demonstrated by the table, TRICARE provides for reduced beneficiary out-of-pocket costs.

Included in the consolidated schedule of beneficiary charges is the ''Uniform HMO Benefit'' design required by law. This is further discussed in the next section of the preamble.

*N. Additional Health Care Management Requirements Under Prime* (proposed § 199.17(n))

This paragraph describes additional health care management requirements within Prime, and establishes the point-of-service option, under which CHAMPUS beneficiaries retain the right to obtain services without a referral, albeit with higher cost sharing. Each CHAMPUS-eligible enrollee will select or be assigned a Primary Care Manager who typically will be the enrollee's health care provider for most services, and will serve as a referral agent to authorize more specialized treatment if needed. Health Care Finder offices will also assist enrollees in obtain referrals to appropriate providers. Referrals for care will give first priority to the local MTF; other referral priorities and practices will be specified during the enrollment process.

*O. Enrollment Procedures* (proposed § 199.17(o))

This paragraph describes procedures for enrollment of beneficiaries other than active duty members, who must enroll. The Prime plan features open season periods during which enrollment is permitted. Prime enrollees will maintain participation in the plan for a 12 month period, with disenrollment only under special circumstances, such as when a beneficiary moves from the area. A complete explanation of the features, rules and procedures of the Program in the particular locality involved will be available at the time enrollment is offered. The features, rules and procedures may be revised over time, coincident with reenrollment opportunities.

*P. Civilian Preferred Provider Networks* (proposed § 199.17(p))

This paragraph sets forth the rules governing civilian preferred provider networks in the TRICARE Program. It includes conformity with utilization management and quality assurance program procedures, provider qualifications, and standards of access for provider networks. In addition, the methods which may be used to establish networks are identified.

DoD beneficiaries who are not CHAMPUS-eligible, such as Medicare beneficiaries, may seek civilian care under the rules and procedures of their existing health insurance program. Providers in the civilian preferred provider network generally will be required to participate in Medicare, so that when Medicare beneficiaries use a network provider they will be assured of a participating provider.

*Q. Preferred Provider Network Establishment Under Any Qualified Provider Method* (proposed § 199.17(q))

This paragraph describes one process that may be used to establish a preferred

provider network (the ''any qualified provider method'') and establishes the qualifications which providers must demonstrate in order to join the network.

*R. General Fraud, Abuse, and Conflict of Interest Requirements Under TRICARE Program* (proposed § 199.17(r))

This paragraph establishes that all fraud, abuse, and conflict of interest requirements for the basic CHAMPUS program are applicable to the TRICARE Program.

*S. Partial Implementation of TRICARE* (proposed § 199.17(s))

This paragraph explains that some portions of TRICARE may be implemented separately: A program without the HMO option, or a program covering a subset of health care services, such as mental health services.

*T. Inclusion of Veterans Hospitals in TRICARE Networks* (proposed § 199.17(t))

This paragraph would provide the basis for participation by Department of Veterans Affairs facilities in TRICARE networks, based on agreements between the VA and DoD.

*U. Cost Sharing of Care for Family Members of Active Duty Members in Overseas Locations* (proposed § 199.17(u))

This paragraph would permit establishment of special CHAMPUS cost sharing rules for family members of active duty members when they accompany the member on a tour of duty outside the United States. A recently initiated demonstration program, described in the **Federal Register** of September 2, 1994 (59 FR 45668), tests such a program for active duty family members in countries served by OCHAMPUS, Europe.

*V. Administrative Procedures* (proposed § 199.17(v))

This paragraph authorizes establishment of administrative procedures for the TRICARE Program.

**III. Provisions of the Rule Concerning the Uniform HMO Benefit Option**

*A. In General.* (§ 199.18(a))

This paragraph introduces the Uniform HMO Benefit option. The statutory provision that establishes the parameters for determination of the Uniform HMO Benefit option is section 731 of the National Defense Authorization Act for Fiscal Year 1994. It requires the establishment of a Uniform HMO Benefit option, which shall ''to the maximum extent practicable'' be included ''in all future managed health care initiatives undertaken by'' DoD. This option is to provide ''reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States.'' The statute further requires a determination that, in the managed care initiative that includes the Uniform HMO Benefit, DoD costs ''are no greater than the costs that would otherwise be incurred to provide health care to the covered beneficiaries who enroll in the option.''

In addition to this provision of the National Defense Authorization Act for Fiscal Year 1994, a similar requirement is established by section 8025 of the DoD Appropriations Act, 1994. As part of an initiative ''to implement a nationwide managed health care program for the military health services system,'' DoD shall establish ''a uniform, stabilized benefit structure characterized by a triple option health benefit feature.'' Our Uniform HMO Benefit also implements this requirement of law.

In fiscal year 1993, DoD implemented the expansion of the CHAMPUS Reform Initiative to the areas of Carswell and Bergstorm Air Force Bases in Texas and England Air Force Base, Louisiana. (These sites were singled out because they were military bases identified for closure in the Bare Realignment and Closure, or ''BRAC'' process; thus the benefit developed for them is called the ''BRAC Benefit.'') This expansion of the CHAMPUS Reform Initiative offers positive incentives for enrollment and preserves the basic design of the original CHAMPUS Reform Initiative program, although it is not identical to that program. The original CHAMPUS Reform Initiative design featured a $5 per visit fee for most office visits, a very much reduced schedule of other copayments, and no deductible or enrollment fee. Although its generosity made it very popular with beneficiaries, it also caused substantial concerns regarding government budget impact. This benefit fails to meet the statutory requirement for cost neutrality to DoD.

The Carswell/Bergstrom/England HMO benefit (BRAC Benefit) model attempts partially to address these concerns, while providing enhanced benefits. It features enrollment fees for some categories of beneficiaries, $5, $10, or $15 per visit fees, depending on beneficiary category, and inpatient per diems of $125 for retirees, their family members and survivors.

A new HMO benefit is being presented in this proposed rule as the Uniform HMO Benefit. The principal features of the proposed benefit are displayed in Table 3 following the preamble. Its most significant change from the BRAC Benefit is that inpatient cost sharing for retirees, their dependents and survivors is reduced to the levels faced by active duty dependents, with concomitant increases in enrollment fees for these beneficiaries. A second important change is that there would be no enrollment fee for dependents of active duty members. Finally, fees are set so that they may be held constant for a five-year period, rather than escalating each year with price inflation.

The development of this proposed Uniform HMO Benefit included painstaking analysis of utilization, cost, and administrative effect of potential cost sharing schedules. This analysis included a series of assumptions regarding most likely ramifications of various components of the benefit and the operation of the TRICARE Program. Based on this exhaustive analysis, the formulation of the Uniform HMO Benefit in the proposed rule is the most generous benefit DoD can offer consistent with the statutory cost-neutrality mandate.

*B. Benefits Covered Under the Uniform HMO Benefit Option* (§ 199.18(b))

For CHAMPUS-eligible beneficiaries, the HMO Benefit option incorporates the existing CHAMPUS benefit package, with potential additions of preventive services and a case management program to approve coverage of usually noncovered health care services (such as home health services) in special situations.

*C. Deductibles, Fees, and Cost Sharing Under the HMO Benefit Option* (proposed § 199.18(c) through (f))

Instead of usual CHAMPUS cost sharing requirements, Uniform HMO Benefit option participants will pay special per-service, specific dollar amounts or special reduced cost sharing percentages, which would vary by category of beneficiary.

The Uniform HMO Benefit also would include an annual enrollment fee, which would be in lieu of the CHAMPUS deductible. The current CHAMPUS deductible is $50 per person or $100 per family for family members of active duty members in pay grades E–1 through E–4; and $150 per person or $300 per family for all other beneficiaries. The enrollment fee under the Uniform HMO Benefit option would vary by beneficiary category: $0 for active duty family members, and $230 individual or $460 family for retirees, their family members, and survivors.

The amount of proposed enrollment fees, outpatient charges and inpatient copayment under the uniform HMO benefit are presented in detail in § 199.18(c) through (f).

*D. Applicability of the Uniform HMO Benefit to the Uniformed Service Treatment Facilities Managed Care Program* (proposed § 199.18(g))

The section would apply the uniform HMO Benefit provisions to the Uniformed Services Treatment Facility Managed Care Program, beginning in fiscal year 1996. This program includes civilian contractors providing health care services under rules quite different from CHAMPUS, the CHAMPUS Reform Initiative, or other CHAMPUS-related programs.

The National Defense Authorization Act for Fiscal Year 1991, section 718(c), required implementation of a ''managed-care delivery and reimbursement model that will continue to utilize the Uniformed Services Treatment Facilities'' in the MHSS. This provision has been amended and supplemented several times since that Act. Most recently, section 718 of the National Defense Authorization Act for Fiscal Year 1994 authorized the establishment of ''reasonable charges for inpatient and outpatient care provided to all categories of beneficiaries enrolled in the managed care program.'' This is a deviation from previous practice, which had tied Uniformed Services Treatment Facilities (USTF) rules to those of military hospitals. This new statutory provision also states that the schedule and application of the reasonable charges shall be in accordance with terms and conditions specified in the USTF Managed Care Plan. The USTF Managed Care Plan agreements call for implementation in the USTF Managed Care Program of cost sharing requirements based on the level and range of cost sharing required in DoD managed care initiatives.

Under section 731 of the FY–94 Authorization Act, the Uniform HMO Benefit is to apply ''to the maximum extent practicable'' to ''all future managed care initiatives undertaken by the Secretary.'' The Conference Report accompanying this Act calls on DoD ''to develop and implement a plan to introduce competitive managed care into the areas served by the USTFs to stimulate competition'' among health care provider organizations ''for the cost-effective provision of quality health care services.'' We have determined that it is practicable to use the Uniform HMO Benefit for the USTF Managed Care Program. In addition, this action will stimulate competition between the USTFs and firms operating the other DoD managed care program to which the Uniform HMO Benefit applies. Based on these Congressional provisions, as well as compelling need for a uniform HMO benefit, we propose to include the USTF Managed Care Program under the Uniform HMO Benefit, effective October 1, 1995.

## IV. Provisions of the Proposed Rule Concerning Other Regulatory Changes

The proposed rule makes a number of additional changes to support implementation of TRICARE.

*A. Nonavailability Statements* (proposed revisions to §§ 199.4(a)(9) and 199.15)

Proposed revisions to § 199.4(a)(9) provide the basis for administrative linkages between a determination of medical necessity and the decision to issue or deny a Nonavailability Statement (NAS). NASs are issued when an MTF lacks the capacity or capability to provide a service, but carry no imprimatur of medical necessity. Proposed revisions to § 199.15 establish ground rules for CHAMPUS PRO review of care in military medical treatment facilities, and would allow for consolidated determinations of medical necessity applicable to both the MTF and civilian contexts when the CHAMPUS PRO performs the review.

Additional proposed revisions to section 199.4 relate to the issuance of NASs by designated military clinics. Beneficiaries residing near such designated clinics would have to obtain a nonavailability statement for the selected outpatient services subject to NAS requirements under § 199.4(A)(9)(i)(C).

In a notice of proposed rule making published on May 11, 1993, we proposed a new provision to allow consideration of availability of care in civilian preferred provider networks in connection with issuance of non-availability statements; in conjunction with this, a considerable expansion of the list of outpatient service for which an NAS is required was proposed. That proposal was not finalized. Now we propose a more limited program, covering only inpatient care. Recently, a demonstration program was established in California and Hawaii, allowing consideration of availability of care in civilian preferred provider networks in connection with issuance of non-availability statements for inpatient services only. The results of the demonstration will be incorporated into a Report to Congress on the expanded use of NASs, as required by section 735 of the National Defense Authorization Act for FY 1995, due not later than December 31, 1994. Early indications are that the demonstration effort has saved money without adverse impacts; the report to Congress will provide a definitive assessment. No final action to expand the program will go into effect until well after we comply with the Congressional reporting requirement.

Finally, proposed revisions to § 199.4(a)(9) would apply NAS requirements in cases where military providers serving at designated military outpatient clinics also provide inpatient care to beneficiaries at civilian hospitals, under External Partnership or Resource Sharing Agreements.

*B. Participating Provider Program* (proposed revisions to § 199.14)

Proposed revisions to § 199.14 change the Participating Provider Program from a mandatory, nationwide program to a localized, optional program. The initial intent of the program was to increase the availability of participating providers by providing a mechanism for providers to sign up as Participating Providers; a payment differential for Participating Providers was to be added as an inducement. With the advent of the TRICARE Program and its extensive networks of providers, the nationwide implementation of the Participating Provider Program would be redundant. Accordingly, this rule would eliminate the nationwide program. Where the need arises, CHAMPUS contractors will act to foster participation, including establishment of a local Participating Provider Program when needed, but not including the payment differential feature.

## V. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This proposed rule will impose additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44

U.S.C. 3501–3511), because beneficiaries will be required to enroll. Information collection requirements are under review.

This is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues raised by public comments will be included with issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

TABLE 1.—CONSOLIDATED SCHEDULE OF BENEFICIARY CHARGES

| | TRICARE prime | TRICARE standard | Medicare eligible beneficiaries |
|---|---|---|---|
| Services from TRICARE Network Providers. | Uniform HMO Benefit cost sharing applies (see Table 4), except unauthorized care covered by point-of-service rules. | TRICARE Extra cost sharing applies (see Table 2). | Cost sharing for Medicare participating providers generally applies. |
| Services from non-network providers. | TRICARE Prime point-of-service rules apply: deductible of $300 per person or $600 per family; cost share of 50 percent. | Standard CHAMPUS cost sharing applies. | Standard Medicare cost sharing applies. |
| Internal resource sharing agreements. | Same as military facility cost sharing. | Same as military facility cost sharing. | Where applicable, same as military facility cost sharing. |
| External resource sharing agreements. | For professional charges, same as military facility cost sharing; for facility charges, same as Uniform HMO Benefit cost sharing. | For professional charges, same as military facility cost sharing; for facility charges, same as TRICARE Extra cost sharing. | Where applicable, for professional charges, same as military facility cost sharing; for facility charges, same as standard Medicare cost sharing. |
| PRIMUS and NAVCARE Clinics established before October 1, 1994. | Same as military facilities | Same as military facilities | Same as military facilities. |
| PRIMUS and NAVCARE Clinics established after September 30, 1994. | Uniform HMO Benefit outpatient cost sharing applies. | Uniform HMO Benefit outpatient cost sharing applies. | Uniform HMO Benefit outpatient cost sharing applies. |
| Prescription drugs from civilian pharmacies. | As specified in Uniform HMO Benefit (see Table 4). | For retail pharmacy network, 20 percent cost share; for mail service pharmacy, $4 per prescription for active duty dependents; $8 per prescription for retirees, their dependents and survivors. | In facility closure cases: from retail pharmacy network, 20 percent cost share; from mail service pharmacy, $8 per prescription; no deductible. |
| Outpatient services in military facilities. | No charge | Same as TRICARE Prime | Same as TRICARE Prime. |
| Inpatient services in military facilities. | Applicable daily subsistence charges. | Same as TRICARE Prime | Same as TRICARE Prime. |

TABLE 2.—PROPOSED TRICARE TRIPLE OPTION PROGRAM

| | TRICARE standard | TRICARE extra | TRICARE prime |
|---|---|---|---|
| ENROLLMENT FEE | NONE | NONE | ACT DUTY DEPS—NONE OTHERS—$230 INDIVIDUAL, $460 FAMILY. |
| OUTPATIENT DEDUCTIBLE | $300 FAMILY ($100 E4 & BELOW). | SAME AS STANDARD CHAMPUS. | NONE. |
| OUTPATIENT SERVICES COST SHARES, INCLUDING MENTAL HEALTH, EMERGENCY SERVICES, ETC. | ACT DUTY DEPS—20% COPAY AFTER DEDUCTIBLE OTHERS—25% COPAY AFTER DEDUCTIBLE. | ACT DUTY DEPS—15% COPAY AFTER DEDUCTIBLE OTHERS—20% COPAY AFTER DEDUCTIBLE. | SEE TABLE 3—SCHEDULE OF UNIFORM HMO BENEFIT COPAYMENTS. |
| INPATIENT COST SHARES, INCLUDING MATERNITY AND SKILLED NURSING FACILITIES, NOT INCLUDING MENTAL HEALTH. | ACT DUTY DEPS—$25 PER ADMISSION OR CURRENT PER DIEM, WHICHEVER IS GREATER OTHERS—LESSER OF APPLICABLE PER DIEM ($323 IN FY 1995) OR 25% OF INSTITUTIONAL CHARGES, PLUS 25% OF PROFESSIONAL CHARGES. | ACT DUTY DEPS—SAME AS STANDARD CHAMPUS OTHERS—LESSER OF $250 PER DAY OR 25% OF INSTITUTIONAL CHARGES, PLUS 20% OF PROFESSIONAL CHARGES. | ACT DUTY DEPS—$25 PER ADMISSION OR $11 PER DIEM, WHICHEVER IS GREATER. OTHERS—SAME AS ACT DUTY DEPS. |
| AMBULATORY SURGERY | ACT DUTY DEPS—$25 PER EPISODE OTHERS—25% OF ALLOWABLE CHARGES. | ACT DUTY DEPS—$25 COPAY OTHERS—20% COPAY AFTER DEDUCTIBLE. | ACT DUTY DEPS—$25 COPAY OTHERS—SAME AS ACT DUTY DEPS. |
| PRESCRIPTION DRUG BENEFITS. | ACT DUTY DEPS—20% COPAY AFTER DEDUCTIBLE OTHERS—25% OF ALLOWABLE CHARGES. | ACT DUTY DEPS—15% COPAY AFTER DEDUCTIBLE; NO DEDUCTIBLE IF NETWORK PHARMACY OTHERS—20% COPAY AFTER DEDUCTIBLE; NO DEDUCTIBLE IF NETWORK PHARMACY. | ACT DUTY DEPS—$5 PER PRESCRIPTION OTHERS—$9 PER PRESCRIPTION. |

TABLE 2.—PROPOSED TRICARE TRIPLE OPTION PROGRAM—Continued

| | TRICARE standard | TRICARE extra | TRICARE prime |
|---|---|---|---|
| HOSPITALIZATION FOR MENTAL ILLNESS AND SUBSTANCE USE. | ACT DUTY DEPS—$25 PER ADMISSION OR $20 PER DIEM WHICHEVER IS GREATER OTHERS—LESSER OF APPLICABLE PER DIEM ($132 IN FY 1995) OR 25% OF INSTITUTIONAL CHARGES, PLUS 25% OF PROFESSIONAL CHARGES. | ACT DUTY DEPS—SAME AS TRICARE STANDARD OTHERS—20% OF INSTITUTIONAL AND PROFESSIONAL CHARGES. | ACT DUTY DEPS—SAME AS TRICARE STANDARD OTHERS—$40 PER DIEM. |

*Note:* THIS CHART IS FOR ILLUSTRATIVE PURPOSES ONLY. IT DOES NOT INCLUDE ALL DETAILS OF BENEFITS AND COPAYMENTS.

TABLE 3.—UNIFORM HMO BENEFIT FEE AND COPAYMENT SCHEDULE

| | ADDs E4 and below | ADDs E5 and above | Retirees, deps, and survivors |
|---|---|---|---|
| Annual Enrollment Fee | $0/$0 | $0/$0 | $230/$460 |
| Outpatient Visits, Including Separate Radiology or Lab Services, Family Health, and Home Health Visits | 6 | 12 | 12 |
| Emergency Room Visits | 10 | 30 | 30 |
| Mental Health Visits, Individual | 10 | 20 | 25 |
| Mental Health Visits, Group | 6 | 12 | 17 |
| Ambulatory Surgery | 25 | 25 | 25 |
| Prescriptions | 5 | 5 | 9 |
| Ambulance Services | 10 | 15 | 20 |
| DME, Prostheses, Supplies | [1] 10 | [1] 15 | [1] 20 |
| Inpatient Per Diem, General | [2] 11 | [2] 11 | [2] 11 |
| Inpatient Per Diem, MH/Substance Use | [2] 20 | [2] 20 | 40 |

[1] Percent.
[2] Minimum $25 per admission.

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

## PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 1079, 1086.

2. Section 199.1 is proposed to be amended by adding a new paragraph (r), to read as follows:

### § 199.1 General provisions.

* * * * *

(r) *TRICARE Program*. Many rules and procedures established in sections of this part are subject to revision in areas where the TRICARE Program is implemented. The TRICARE Program is the means by which managed care activities designed to improve the delivery and financing of health care services in the Military Health Services System (MHSS) are carried out. Rules and procedures for the TRICARE Program are set forth in § 199.17.

3. Section 199.2(b) is proposed to be amended by adding the following definitions and placing them in alphabetical order to read as follows:

### § 199.2 Definitions.

* * * * *

(b) * * *

*External Resource Sharing Agreement.* A type of External Partnership Agreement, established in the context of the TRICARE program by agreement of a military treatment facility commander and an authorized TRICARE contractor. External Resource Sharing Agreements may incorporate TRICARE features in lieu of standard CHAMPUS features that would apply to standard External Partnership Agreements.

* * * * *

*Internal Resource Sharing Agreement.* A type of Internal Partnership Agreement, established in the context of the TRICARE program by agreement of a military treatment facility commander and an authorized TRICARE contractor. Internal Resource Sharing Agreements may incorporate TRICARE features in lieu of standard CHAMPUS features that would apply to standard Internal Partnership Agreements.

*NAVCARE Clinics.* Contractor owned, staffed, and operated primary clinics exclusively serving uniformed services beneficiaries pursuant to contracts awarded by a Military Department.

* * * * *

*PRIMUS Clinics.* Contractor owned, staffed, and operated primary care clinics exclusively serving uniformed services beneficiaries pursuant to contracts awarded by a Military Department.

* * * * *

*TRICARE Program*. The program established under § 199.17.

* * * * *

*TRICARE Extra Plan*. The health care option, provided as part of the TRICARE Program under § 199.17, under which beneficiaries may choose to receive care in facilities of the uniformed services, or from special civilian network providers (with reduced cost sharing), or from any other CHAMPUS-authorized provider (with standard cost sharing).

* * * * *

*TRICARE Prime Plan*. The health care option, provided as part of the TRICARE Program under § 199.17, under which beneficiaries enroll to receive all health care from facilities of the uniformed services and civilian network providers (with civilian care subject to substantially reduced cost sharing).

* * * * *

*TRICARE Standard Plan.* The health care option, provided as part of the TRICARE Program under § 199.17, under which beneficiaries are eligible for care in facilities of the uniformed services and CHAMPUS under standard rules and procedures.

* * * * *

*Uniform HMO benefit.* The health care benefit established by § 199.18.

* * * * *

*Uniformed Services Treatment Facilities Managed Care Program.* The managed care program established pursuant to section 718(c) of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101–510, for certain former Public Health Service hospitals deemed to be facilities of the uniformed services by section 911 of the Military Construction Authorization Act, 1982, Pub. L. 97–99, 42 U.S.C. 248C. Certain rules pertaining to this program are established by § 199.18.

* * * * *

4. Section 199.4 is proposed to be amended by redesignating paragraph (a)(1) as paragraph (a)(1)(i), by adding new paragraph (a)(1)(ii), by revising paragraph (a)(9)(i)(C), and by adding new paragraphs (a)(9)(vi) and (a)(9)(vii), to read as follows:

**§ 199.4 Basic program benefits.**

(a) * * *

(1) * * *

(ii) *Impact of TRICARE Program.* The basic program benefits set forth in this section are applicable to the basic CHAMPUS program. In areas in which the TRICARE Program is implemented, certain provisions of § 199.17 will apply instead of the provisions of this section. In those areas, the provisions of § 199.17 will take precedence over any provisions of this section with which they conflict.

* * * * *

(9) * * *

(i) * * *

(C) An NAS is also required for selected outpatient procedures if such services are not available at a Uniformed Service facility (including selected facilities which are exclusively outpatient clinics) located within a 40-mile radius (catchment area) of the residence of the beneficiary. This does not apply to emergency services or for services for which another insurance plan or program provides the beneficiary primary coverage. Any changes to the selected outpatient procedures will be published in the **Federal Register** at least 30 days before the effective date of the change by the ASD(HA) and will be limited to the following categories: Outpatient surgery and other selected outpatient procedures which have high unit costs and for which care may be available in military facilities generally. The selected outpatient procedures will be uniform for all CHAMPUS beneficiaries. A list of the selected outpatient clinics to which this NAS requirement applies will be published periodically in the **Federal Register**.

* * * * *

(vi) *Consideration of availability of care in civilian preferred provider networks in connection with issuance of Nonavailability Statements.*—(A) *General requirement.* With respect to any inpatient health care service subject to a Nonavailability Statement requirement under paragraph (a)(9)(B) of this section, in determining whether to issue a Nonavailability Statement, the commander of the military treatment facility may consider the availability of services from selected civilian health care facilities within the same catchment area. If the commander determines that, although the services are not available from a military treatment facility, the services are available from such a selected civilian facility, the commander may deny a Nonavailability Statement. If a Nonavailability Statement is denied on this basis, CHAMPUS cost sharing is not allowed if the services are not obtained from the designated civilian facility. Civilian facilities to which this requirement applies are those facilities that are in a preferred provider network, established under procedures specified by the Director, OCHAMPUS, within the 40-mile catchment are, able to provider the services needed.

(B) *Additional requirement under External Partnership/Resource Sharing programs.* The Assistant Secretary of Defense (Health Affairs) may designate selected military outpatient clinics for additional NAS requirements regarding inpatient hospital care available under an External Partnership or External Resources Sharing agreement. Under such an agreement, care will be provided at a civilian facility, but professional services will be provided by on or more physicians (or other individual health care providers) on staff at the military outpatient clinic. With respect to the designated military outpatient clinics and the specified services covered by such External Partnership or External Resource Sharing agreement, Nonavailability Statements will be required to the same extent as they are for inpatient military hospitals located within an approximately 40-mile radius of a beneficiary's residence. If services are available under an External Partnership Resource Sharing agreement, the military clinic commander may deny a Nonavailability Statement. If a Nonavailability Statement is denied on this basis, CHAMPUS cost sharing is not allowed if the services are not obtained from the designated civilian facility under the External Partnership or External Resource Sharing agreement. A list of selected military outpatient clinics and services covered by the External Partnership or External Resource Sharing agreement NAS requirement will be published periodically in the **Federal Register**.

(C) *Exceptions.* A Nonavailability Statement may not be withheld on the basis of paragraphs (a)(9)(vi)(A) or (a)(9)(vi)(B) of this section in any of the following circumstances:

(*1*) A case-by-case waiver is granted based on a medical judgment made by the commander (or other official designated for this purpose) of the military treatment facility (or Specialized Treatment Service Center) that although the care is available from a designated civilian provider, it would be medically inappropriate because of a delay in the treatment or other special reason to require that such provider be used; or

(*2*) A case-by-case waiver is granted by the commander (or other official designated for this purpose) of the military treatment facility (or Specialized Treatment Service Center) that although the care is available from a designated civilian provider, use of that provider would impose exceptional hardship on the beneficiary or the beneficiary's family.

(D) *Procedures.* The waiver request and appeal procedures established pursuant to paragraph (a)(10)(vii) of this section shall be applicable to the case-by-case waivers referred to in paragraph (a)(9)(vi)(C) of this section.

(E) *Preference for military facility use.* In any case in which services subject to a Nonavailability Statement requirement under paragraph (a)(9) of this section are available from both a military treatment facility and from a designated civilian facility under paragraph (a)(9)(vi) of this section, the military treatment facility must be used unless use of the designated civilian facility is specifically authorized.

(vii) In the case of any service subject to an NAS requirement under paragraph (a)(9) of this section and also subject to a preadmission (or other pre-service) authorization requirement under § 199.4 or § 199.15, the administrative processes for the NAS and pre-service authorization may be combined.

* * * * *

**§ 199.14 [Amended]**

5. Section 199.14 is proposed to be amended by removing paragraph (g)(1)(i)(C) and by redesignating paragraph (g)(1)(i)(D) as paragraph (g)(1)(i)(C).

6. Section 199.15 is proposed to be amended by adding a new paragraph (n), to read as follows:

**§ 199.15 Peer Review Organization Program.**

* * * * *

(n) *Authority to integrate CHAMPUS PRO and military treatment facility utilization review activities.* (1) In the case of a military medical treatment facility (MTF) that has established utilization review requirements similar to those under the CHAMPUS PRO program, the PRO may, at the request of the MTF, utilize procedures comparable to the CHAMPUS PRO program procedures to render determinations or recommendations with respect to MTF utilization review requirements.

(2) In any case in which a CHAMPUS PRO has comparable responsibility and authority regarding utilization review in both an MTF (or MFTs) and CHAMPUS, determinations as to medical necessity in connection with services from an MTF or CHAMPUS-authorized provider may be consolidated.

(3) In any case in which an MFT reserves authority to separate an MTF determination on medical necessity from a CHAMPUS PRO program determination on medical necessity, the MTF determination is not binding on CHAMPUS.

7. Sections 199.17 and 199.18 are proposed to be added, to read as follows:

**§ 199.17 TRICARE Program.**

(a) *Establishment.* The TRICARE Program is established for the purpose of implementing a comprehensive managed health care program for the delivery and financing of health care services in the MHSS.

(1) *Purpose.* The TRICARE Program implements management improvements primarily through managed care support contracts that include special arrangements with civilian sector health care providers and better coordination between military treatment facilities and these civilian providers. Implementation of these management improvements includes adoption of special rules and procedures not ordinarily followed under CHAMPUS or military treatment facility requirements. This section establishes those special rules and procedures.

(2) *Statutory authority.* Many of the provisions of this section are authorized by statutory authorities other than those which authorize the usual operation of the CHAMPUS program, especially 10 U.S.C. 1079 and 1086. The TRICARE Program also relies upon other available statutory authorities, including 10 U.S.C. 1099 (health care enrollment system), 10 U.S.C. 1097 (contracts for medical care for retirees, dependents and survivors: Alternative delivery of health care), and 10 U.S.C. 1096 (resource sharing agreements).

(3) *Scope of the program.* The TRICARE Program is applicable to all of the uniformed services. Its geographical applicability is all 50 states and the District of Columbia. In addition, if authorized by the Assistant Secretary of Defense (Health Affairs), the TRICARE Program may be implemented in areas outside the 50 states and the District of Columbia. In such cases, the Assistant Secretary of Defense (Health Affairs) may also authorize modifications to TRICARE Program rules and procedures as may be appropriate to the area involved.

(4) *MTF rules and procedures affected.* Much of this section relates to rules and procedures applicable to the delivery and financing of health care services provided by civilian providers outside military treatment facilities. This section provides that certain rules, procedures, rights and obligations set forth elsewhere in this part (and usually applicable to CHAMPUS) are different under the TRICARE Program. In addition, some rules, procedures, rights and obligations relating to health care services in military treatment facilities are also different under the TRICARE Program. In such cases, provisions of this section take precedence and are binding.

(5) *Implementation based on local action.* The TRICARE Program is not automatically implemented in all areas. Therefore, provisions of this section are not automatically implemented. Rather, implementation of the TRICARE Program and this section requires an official action by an authorized individual, such as a military treatment facility commander, a Surgeon General, the Assistant Secretary of Defense (Health Affairs), or other person authorized by the Assistant Secretary. Public notice of the initiation of the TRICARE Program will be achieved through appropriate communication and media methods and by way of an official announcement by the Director, OCHAMPUS, identifying the military treatment facility catchment area or other geographical area covered.

(6) *Major features of the TRICARE Program.* The major features of the TRICARE Program, described in this section, include the following:

(i) *Comprehensive enrollment system.* Under the TRICARE Program, all health care beneficiaries become enrolled in TRICARE and classified into one of five enrollment categories:

(A) Active duty members, all of whom are automatically enrolled in TRICARE Prime;

(B) TRICARE Prime enrollees, who (except for active duty members) must be CHAMPUS eligible;

(C) TRICARE Standard enrollees, which covers all CHAMPUS-eligible beneficiaries who do not enroll in TRICARE Prime or another managed care program affiliated with TRICARE;

(D) Medicare-eligible beneficiaries, who, although not eligible for TRICARE Prime, may participate in many features of TRICARE; and

(E) Participants in other managed care program affiliated with TRICARE.

(ii) *Establishment of a triple option benefit.* A second major feature of TRICARE is the establishment for CHAMPUS-eligible beneficiaries of three options for receiving health care:

(A) Beneficiaries may enroll in the ''TRICARE Prime Plan,'' which features use of military treatment facilities and substantially reduced out-of-pocket costs for CHAMPUS care. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks.

(B) Beneficiaries may participate in the ''TRICARE Extra Plan'' under which the preferred provider network may be used on a case-by-case basis, with somewhat reduced out-of-pocket costs. These beneficiaries also continue to be eligible for military treatment facility care.

(C) Beneficiaries may remain in the ''TRICARE Standard Plan,'' which preserves broad freedom of choice of civilian providers (subject to nonavailability statement requirements of § 199.4), but does not offer reduced out-of-pocket costs. These beneficiaries continue to be eligible to receive care in military treatment facilities.

(iii) *Coordination between military and civilian health care delivery systems.* A third major feature of the TRICARE Program is a series of activities affecting all beneficiary enrollment categories, designed to coordinate care between military and civilian health care systems. These activities include:

(A) Resource sharing agreements, under which a TRICARE contractor provides to a military treatment facility personnel and other resources to increase the availability of services in the facility. All beneficiary enrollment

categories may benefit from this increase.

(B) Health care finder, an administrative office that facilitates referrals to appropriate health care services in the military facility and civilian provider network. All beneficiary enrollment categories may use the health care finder.

(C) Integrated quality and utilization management services, potentially standardizing reviews for military and civilian sector providers. All beneficiary categories may benefit from these services.

(D) Special pharmacy programs for areas affected by base realignment and closure actions. This includes special eligibility for Medicare-eligible beneficiaries.

(E) PRIMUS or NAVCARE Clinics, for which all beneficiary enrollment categories are eligible.

(iv) *Consolidated schedule of charges.* A fourth major feature of TRICARE is a consolidated schedule of charges, incorporating revisions that reduce differences in charges between military and civilian services. In general, the TRICARE Program reduces out-of-pocket costs for civilian sector care.

(b) *Triple option benefit in general.* Where the TRICARE Program is implemented, CHAMPUS-eligible beneficiaries are given the options of enrolling in the TRICARE Prime Plan (also referred to as ''Prime''); being a participant in TRICARE Extra on a case-by-case basis (also referred to as ''Extra''); or remaining in the TRICARE Standard Plan (also referred to as ''Standard'').

(1) *Choice voluntary.* With the exception of active duty members, the choice of whether to enroll in Prime, to participate in Extra, or to remain in Standard is voluntary for all eligible beneficiaries. This applies to active duty dependents and eligible retired members, dependents of retired members, and survivors. For dependents who are minors, the choice will be exercised by a parent or guardian.

(2) *Active duty members.* For active duty members located in areas where the TRICARE Program is implemented, enrollment in Prime is mandatory.

(c) *Eligibility for enrollment in Prime.* Where the TRICARE Program is implemented, all CHAMPUS-eligible beneficiaries are eligible to enroll. However, some rules and procedures are different for dependents of active duty members than they are for retirees, their dependents and survivors. In addition, where the TRICARE Program is implemented, a military treatment facility commander or other authorized individual may establish priorities, consistent with paragraph (c) of this section, based on availability or other operational requirements, for when and whether to offer the enrollment opportunity.

(1) *Active duty members.* Active duty members are required to enroll in Prime when it is offered. Active duty members shall have first priority for enrollment in Prime. Because active duty members are not CHAMPUS eligible, when active duty members obtain care from civilian providers outside the military treatment facility, the supplemental care program and its requirements (including § 199.16) will apply.

(2) *Dependents of active duty members.* (i) Dependents of active duty members are eligible to enroll in Prime. After all active duty members, dependents of active duty members will have second priority for enrollment.

(ii) If all dependents of active duty members within the area concerned cannot be accepted for enrollment in Prime at the same time, the MTF Commander (or other authorized individual) may establish priorities within this beneficiary group category. The priorities may be based on first-come, first-served, or alternatively, be based on rank of sponsor, beginning with the lowest pay grade.

(3) *Retired members, dependents of retired members, and survivors.* (i) All CHAMPUS-eligible retired members, dependents of retired members, and survivors are eligible to enroll in Prime. After all active duty members are enrolled and availability of enrollment is assured for all active duty dependents wishing to enroll, this category of beneficiaries will have third priority for enrollment.

(ii) If all CHAMPUS-eligible retired members, dependents of retired members, and survivors within the area concerned cannot be accepted for enrollment in Prime at the same time, the MTF Commander (or other authorized individual) may allow enrollment within this beneficiary group category on a first come, first served basis.

(4) *Participation in Extra and Standard.* All CHAMPUS-eligible beneficiaries who do not enroll in Prime may particiate in Extra on a case-by-case basis or remain in Standard.

(d) *Health benefits under Prime.* Health benefits under Prime, set forth in paragraph (d) of this section, differ from those under Extra and Standard, set forth in paragraphs (e) and (f) of this section.

(1) *Military Treatment Facility (MTF) care.* All participants in Prime are eligible to receive care in military treatment facilities. Active duty dependents who are participants in Prime will be given priority for such care over other active duty dependents who declined the opportunity to enroll in Prime. The latter group, however, retains priority over retirees, their dependents and survivors. There is no priority for MTF care among retirees, their dependents and survivors based on enrollment status.

(2) *Non-MTF care for active duty members.* Under Prime, non-MTF care needed by active duty members continues to be arranged under the supplemental care program and subject to the rules and procedures of that program, including those set forth in § 199.16.

(3) *Benefits covered for CHAMPUS eligible beneficiaries for civilian sector care.* The provisions of § 199.18 regarding the Uniform HMO Benefit apply to TRICARE Prime enrollees.

(e) *Health benefits under the TRICARE Extra Plan.* Beneficiaries not enrolled in Prime, although not in general required to use the Prime civilian preferred provider network, are eligible to use the network on a case-by-case basis under Extra. The healthy benefits under Extra are identical to those under Standard, set forth in paragraph (f) of this section, except that the CHAMPUS cost sharing percentages are lower than usual CHAMPUS cost sharing. The lower requirements are set forth in the consolidated schedule of charges in paragraph (m) of this section.

(f) *Health benefits under the TRICARE Standard Plan.* Where the TRICARE Program is implemented, health benefits under Prime, set forth under paragraph (d) of this section, and Extra, set forth under paragraph (e) of this section, are different than health benefits under Standard, set forth in this paragraph (f).

(1) *Military Treatment Facility (MTF) care.* All participants in Standard and all nonenrollees (including beneficiaries not eligible to enroll) continue to be eligible to receive care in military treatment facilities on a space available basis.

(2) *Freedom of choice of civilian provider.* Except as stated in § 199.4(a) in connection with nonavailability statement requirements, CHAMPUS-eligible participants in Standard maintain their freedom of choice of civilian provider under CHAMPUS. All nonavailability statement requirements of § 199.4(a) apply to Standard participants.

(3) *CHAMPUS benefits apply.* The benefits, rules and procedures of the CHAMPUS basic program as set forth in this part, shall apply to CHAMPUS-eligible participants in Standard.

(4) *Perferred provider network option for Standard participants.* Standard participants, although not generally required to use the TRICARE Program preferred provider network are eligible to use the network on a case-by-case basis, under Extra.

(g) *Coordination with other health care programs.* (1) *Authority.* In the case of any beneficiary of the military health services system, other than active duty members, who is enrolled in a managed health care program not operated by the military health services system, the Director, OCHAMPUS may establish a contract or agreement with such other managed health care program for the purpose of coordinating the beneficiary's dual entitlements under such program and the military health services system.

(2) *Covered programs.* A managed health care program with which arrangements may be made under this paragraph (g) includes any health maintenance organization, competitive medical plan, health care prepayment plan, or other managed care program recognized by the Director, OCHAMPUS. This includes managed care programs that operate under the authority of the Medicare program.

(3) *Coordination activities.* Any contract or agreement entered into under this paragraph (g) may integrate health care benefits, delivery, financing, and administrative features of the other managed care plan with some or all features of the TRICARE program.

(h) *Resource sharing agreements.* Under the TRICARE Program, any military treatment facility commander may establish resource sharing agreements with the applicable managed care support contractor for the purpose of providing for the sharing of resources between the two parties. Internal resource sharing and external resource sharing agreements are authorized. The provisions of this paragraph (h) shall apply to resource sharing agreements under the TRICARE Program.

(1) In connection with internal resource sharing agreements, beneficiary cost sharing requirements shall be the same as those applicable to health care services provided in facilities of the uniformed services.

(2) Under internal resource sharing agreements, the double coverage requirements of § 199.8 may be replaced by the Third Party Collection procedures of 32 CFR part 220. In such a case, payments made to a resource sharing agreement provider through the TRICARE managed care support contractor shall be deemed to be payments by the military treatment facility concerned.

(3) Under internal or external resource sharing agreements, the commander of the military treatment facility concerned may authorize the provision of services pursuant to the agreement to Medicare-eligible beneficiaries, if the commander determines that this will promote the most cost-effective provision of services under the TRICARE program.

(i) *Health Care Finder.* The Health Care Finder is an administrative office that assists beneficiaries in being referred to appropriate health care providers, especially the MTF and preferred providers. Health Care Finder services are available to all beneficiaries. In the case of TRICARE Prime enrollees, the Health Care Finder will facilitate referrals in accordance with Prime rules and procedures. For Standard enrollees, the Finder will provide assistance for use of Extra. For Medicare-eligible beneficiaries, the Finder will facilitate referrals to TRICARE network providers, generally required to be Medicare participating providers. For participants in other managed care programs, the Finder will assist in referrals pursuant to the arrangements made with the other managed care program. For all beneficiary enrollment categories, the finder will assist In obtaining access to available services in the medical treatment facility.

(j) *General quality assurance, utilization review, and preauthorization requirements under TRICARE Program.* All quality assurance, utilization review, and preauthorization requirements for the basic CHAMPUS program, as set forth in this part 199 (see especially applicable provisions of §§ 199.4 and 199.15), are applicable to Prime, Extra and Standard under the TRICARE Program. Under all three options, some methods and procedures for implementing and enforcing these requirements may differ from the methods and procedures followed under the basic CHAMPUS program in areas in which the TRICARE Program has not been implemented. Pursuant to an agreement between a military treatment facility and TRICARE managed care support contractor, quality assurance, utilization review, and preauthorization requirements and procedures applicable to health care services outside the military treatment facility may be made applicable, in whole or in part, to health care services inside the military treatment facility.

(k) *Pharmacy services in base realignment and closure sites.*—(1) *In general.* TRICARE includes two special programs under which covered beneficiaries, including Medicare-eligible beneficiaries, who live in areas adversely affected by base realignment and closure actions are given a pharmacy benefit for prescription drugs provided outside military treatment facilities. The two special programs are the retail pharmacy network program and the mail service pharmacy program.

(2) *Retail pharmacy network program.* To the maximum extent practicable, a retail pharmacy network program will be included in the TRICARE Program wherever implemented. Except for the special rules applicable to Medicare-eligible beneficiaries in areas adversely affected by military treatment facility closures, the retail pharmacy network program will function in accordance with TRICARE rules and procedures otherwise applicable. In addition, a retail pharmacy network program may on a temporary, transitional basis be established in a base realignment or closure site independent of other features of the TRICARE program. Such a program may be established through arrangements with one or more pharmacies in the area and may continue until a managed care program is established to serve the affected beneficiaries.

(3) *Mail service pharmacy program.* A mail service pharmacy program will be established to the extent required by law as part of the TRICARE Program. The special rules applicable to Medicare-eligible beneficiaries established in this paragraph (k) shall be applicable.

(4) *Medicare-eligible beneficiaries in areas adversely affected by military treatment facility closures.* Under the retail pharmacy network program and mail service pharmacy program, there is a special eligibility rule pertaining to Medicare-eligible beneficiaries in areas adversely affected by military treatment facility closures.

(i) *Medicare-eligible beneficiaries.* The special eligibility rule pertains to military system beneficiaries who are not eligible for CHAMPUS solely because of their eligibility for part A of Medicare.

(ii) *Area adversely affected by closure.* To be eligible for use of the retail pharmacy network program or mail service pharmacy program, a Medicare-eligible beneficiary must maintain a principle place of residency in the catchment area of the military medical treatment facility that closed. In addition, there must be a retail pharmacy network or mail service pharmacy established in that area. In identifying areas adversely affected by a closure, the provisions of this paragraph (k)(4)(ii) shall apply.

(A) In the case of the closure of a military hospital, the area adversely affected is the established 40-mile catchment area of the military hospital that closed.

(B) In the case of the closure of a military clinic (a military treatment facility that provided no inpatient care services), the area adversely affected is an area approximately 40 miles in radius from the clinic, established in a manner comparable to the manner in which catchment areas of military hospitals are established. However, this area will not be considered adversely affected by the closure of the clinic if the Director, OCHAMPUS determines that the clinic was not, when it had been in regular operation, providing a substantial amount of pharmacy services to retirees and their dependents.

(C) An area that is within the 40-mile catchment area of a military treatment facility that closed will not be considered adversely affected by the closure if that area is also within a 40-mile catchment area of another military medical treatment facility (inpatient or outpatient) that the Director, OCHAMPUS determines can provide a substantial amount of pharmacy services to retirees and their dependents.

(iii) *Other Medicare-eligible beneficiaries adversely affected.* In addition to beneficiaries identified in paragraph (k)(4)(ii) of this section, eligibility for the retail pharmacy network program and mail service pharmacy program is also established for Medicare-eligible beneficiaries who can demonstrate to the satisfaction of the Director, OCHAMPUS that he or she relied upon a military medical treatment facility that closed for his or her pharmaceuticals. The Director, OCHAMPUS shall establish guidelines for making such a demonstration.

(iv) *Effective date of eligibility for Medicare-eligible beneficiaries.* In any case in which, prior to the complete closure of a military treatment facility in the process of closure, the Director, OCHAMPUS determines that the area has been adversely affected by severe reductions in access to services, the Director, OCHAMPUS may establish an effective date for eligibility for the retail pharmacy network program or mail service pharmacy program for Medicare-eligible beneficiaries prior to the complete closure of the facility.

(5) *Effect of other health insurance.* The double coverage rules of § 199.8 are applicable to services provided to all beneficiaries under the retail pharmacy network program or mail service pharmacy program. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans are double coverage plans and will be the primary payor.

(6) *Procedures.* The Director, OCHAMPUS shall establish procedures for the effective operation of the retail pharmacy network program and mail service pharmacy program. Such procedures may include the use of appropriate drug formularies, restrictions of the quantity of pharmaceuticals to be dispensed, encouragement of the use of generic drugs, implementation of quality assurance and utilization management activities, and other appropriate matters.

(l) *PRIMUS and NAVCARE Clinics.* (1) *Authority.* The Assistant Secretary of Defense for Health Affairs may authorize the establishment of PRIMUS and NAVCARE Clinics. These clinics are contractor owned, staffed, and operated clinics that exclusively serve uniformed services beneficiaries.

(2) *Eligible beneficiaries.* All TRICARE beneficiary enrollment categories are eligible for care in PRIMUS and NAVCARE Clinics. This includes active duty members, Medicare eligible beneficiaries and other persons not eligible for CHAMPUS.

(3) *Services and charges.* (i) For care provided PRIMUS and NAVCARE Clinics established prior to October 1, 1994, CHAMPUS rules regarding program benefits, deductibles and cost sharing requirements do not apply. Services offered and charges will be based on those applicable to care provided in military medical treatment facilities.

(ii) For care provided in PRIMUS and NAVCARE Clinics established after September 30, 1994, the provisions of § 199.18(d)(3) regarding outpatient cost sharing requirements under the Uniform HMO Benefit shall apply.

(4) *Procedures.* The Director, OCHAMPUS will establish procedures for PRIMUS and NAVCARE Clinics. Such procedures may waive normal requirements of this part that are not required by law. Except to the extent required by law, the procedures established by the Director for PRIMUS and NAVCARE Clinics may be based on rules and procedures applicable to military medical treatment facilities.

(m) *Consolidated schedule of beneficiary charges.* The following consolidated schedule of beneficiary charges is applicable to health care services provided under TRICARE for Prime enrollees, Standard enrollees and Medicare-eligible beneficiaries. (There are no charges to active duty members. Charges for participants in other managed health care programs affiliated with TRICARE will be specified in the applicable affiliation agreements.)

(1) *Cost sharing for services from TRICARE network providers.* (i) For Prime enrollees, cost sharing is as specified in the Uniform HMO Benefit in § 199.18, except that for care not authorized by the primary care manager or Health Care Finder, rules applicable to the TRICARE point of service option (see paragraph (n)(3) of this section) are applicable. The deductible is $300 per person and $600 per family. The beneficiary copayment per service is 50 percent.

(ii) For Standard enrollees, TRICARE Extra cost sharing applies. The deductible is the same as standard CHAMPUS. Copayments are:

(A) For outpatient professional services, cost sharing will be reduced from 20 percent to 15 percent for dependents of active duty members.

(B) For most services for retired members, dependents of retired members, and survivors, cost sharing is reduced from 25 percent to 20 percent.

(C) In fiscal year 1995, the per diem inpatient hospital copayment for retirees, dependents of retirees, and survivors when they use a preferred provider network hospital is $250 per day, or 25 percent of total charges, whichever is less. There is a nominal copayment for active duty dependents, which is the same as under the CHAMPUS program (see § 199.4). The per diem amount may be updated for subsequent years based on changes in the standard CHAMPUS per diem.

(D) For prescription drugs obtained from network pharmacies, the CHAMPUS deductible will not apply.

(iii) For Medicare-eligible beneficiaries, cost sharing will generally be as applicable to Medicare participating providers.

(2) *Cost sharing for non-network providers.* (i) For TRICARE Prime enrollees, rules applicable to the TRICARE point of service option (see paragraph (n)(3) of this section) are applicable. The deductible is $300 per person and $600 per family. The beneficiary copayment per service is 50 percent.

(ii) For Standard enrollees, cost sharing is as specified for the basic CHAMPUS program.

(iii) For Medicare eligible beneficiaries, cost sharing is as provided under the Medicare program.

(3) *Cost sharing under internal resource sharing agreements.* (i) For Prime enrollees, cost sharing is as provided in military treatment facilities.

(ii) For Standard enrollees, cost sharing is as provided in military treatment facilities.

(iii) For Medicare eligible beneficiaries, where made applicable by the commander of the military treatment facility concerned, cost sharing will be as provided in military treatment facilities.

(4) *Cost sharing under external resource sharing.* (i) For Prime enrollees, cost sharing applicable to services provided by military facility personnel shall be as applicable to services in military treatment facilities; that applicable to institutional and related ancillary charges shall be as applicable to services provided under TRICARE Prime.

(ii) For Standard enrollees, cost sharing applicable to services provided by Military facility personnel shall be as applicable to services in military treatment facilities; that applicable to institutional and related ancillary charges shall be as applicable to services provided under TRICARE Extra.

(iii) For Medicare-eligible beneficiaries, where available, cost sharing applicable to services provided by military facility personnel shall be as applicable to services in military treatment facilities; that applicable to institutional and related ancillary charges shall be as applicable to services provided under Medicare.

(5) *Prescription drugs.* (i) For Prime enrollees, cost sharing is as specified in the Uniform HMO Benefit.

(ii) For Standard enrollees, there is a 20 percent copayment for prescription drugs provided by retail pharmacy network providers. The copayment for all beneficiaries under the mail service pharmacy program is $4.00 for active duty dependents and $8.00 for all other covered beneficiaries per prescription; for up to a 60 day supply. There is no deductible for this program.

(iii) For Medicare-eligible beneficiaries affected by military treatment facility closures, there is a 20 percent copayment for prescriptions provided under the retail pharmacy network program, and an $8.00 copayment per prescription, for up to a 60-day supply, for prescriptions provided by the mail service pharmacy program. There is no deductible under their programs.

(6) *Cost share for outpatient services in military treatment facilities.* (i) For dependents of active duty members in all enrollment categories, there is no charge for outpatient visits provided in military medical treatment facilities.

(ii) For retirees, their dependents, and survivors in all enrollment categories, there is no charge for outpatient visits provided in military medical treatment facilities.

(n) *Additional health care management requirements under TRICARE Prime.* Prime has additional, special health care management requirements not applicable under Extra, Standard or the CHAMPUS basic program. Such requirements must be approved by the Assistant Secretary of Defense (Health Affairs). In TRICARE, all care may be subject to review for medical necessity and appropriateness of level of care, regardless of whether the care is provided in a military treatment facility or in a civilian setting. Adverse determinations regarding care in military facilities will be appealable in accordance with established military medical department procedures, and adverse determinations regarding civilian care will be appealable in accordance with § 199.15.

(1) *Primary care manager.* All active duty members and Prime enrollees will be assigned or be allowed to select a primary care manager pursuant to a system established by the MTF Commander or other authorized official. The primary care manager may be an individual physician, a group practice, a clinic, a treatment site, or other designation. The primary care manager may be part of the MTF or the Prime civilian provider network. The enrollees will be given the opportunity to register a preference for primacy care manager from a list of choices provided by the MTF Commander. Preference requests will be honored subject to availability under the MTF beneficiary category priority system and other operational requirements established by the commander (or other authorized person).

(2) *Restrictions on the use of providers.* The requirements of this paragraph (n)(2) shall be applicable to health care utilization under TRICARE Prime, except in cases of emergency care and under the point-of-service option (see paragraph (n)(3) of this section).

(i) Prime enrollees must obtain all primary health care from the primary care manager or from another provider to which the enrollee is referred by the primary care manager or Health Care Finder.

(ii) For any necessary specialty care and all inpatient care, the primary care manager or Health Care Finder will assist in making an appropriate referral. All such nonemergency specialty care and inpatient care must be preauthorized by the primary care manager or Health Care Finder.

(iii) The following procedures will apply to health care referrals and preauthorizations in catchment areas under TRICARE Prime:

(A) The first priority for referral for specialty care or inpatient care will be to the local MTF (or to any other MTF in which catchment area the enrollee resides).

(B) If the local MTF(s) are unavailable for the services needed, but there is another MTF at which the needed services can be provided, the enrollee may be required to obtain the services at that MTF. However, this requirement will only apply to the extent that the enrollee was informed at the time of (or prior to) enrollment that mandatory referrals might be made to the MTF involved for the service involved.

(C) If the needed services are available within civilian preferred provider network serving the area, the enrollee may be required to obtain the services from a provider within the network. Subject to availability, the enrollee will have the freedom to choose a provider from among those in the network.

(D) If the needed services are not available within the civilian preferred provider network serving the area, the enrollee may be required to obtain the services from a designated civilian provider outside the area. However, this requirement will only apply to the extent that the enrollee was informed at the time of (or prior to) enrollment that mandatory referrals might be made to the provider involved for the service involved (with the provider and service either identified specifically or in connection with some appropriate classification).

(E) In cases in which the needed health care services cannot be provided pursuant to the procedures identified in paragraphs (n)(2)(iii) (A) through (D) of this section, the enrollee will receive authorization to obtain services from a CHAMPUS-authorized civilian provider(s) of the enrollee's choice not affiliated with the civilian preferred provider network.

(iv) When Prime is operating in noncatchment areas, the requirements in paragraphs (n)(2)(iii) (B) through (E) of this section shall apply.

(v) Any health care services obtained by a Prime enrollee not obtained in accordance with the utilization management rules and procedures of the Prime will not be paid for by Prime, but may be covered by the point-of-service option (see paragraph (n)(3) of this section). However, Prime may cover such services if the enrollee did not know and could not reasonably have been expected to know that the services were not obtained in accordance with the utilization management rules and procedures of Prime.

(3) *Point-of-service option.* TRICARE Prime enrollees retain the freedom to

obtain services from civilian providers on a point-of-service basis. In such cases, all requirements applicable to standard CHAMPUS shall apply, except that there shall be higher deductible and cost sharing requirements (as set forth in paragraphs (m)(1)(i) and (m)(2)(i) of this section).

(o) *TRICARE Program enrollment procedures.* There are certain requirements pertaining to procedures for enrollment in Prime. (These procedures do not apply to active duty members, whose enrollment is mandatory.)

(1) *Open season enrollment.* Beneficiaries will be offered the opportunity to enroll in Prime during designated periods of time. Subject to exceptions for change of residence and other changes, enrollment will be limited to the open season periods announced at the time the TRICARE Program is implemented in a particular area.

(2) *Enrollment period.* The Prime enrollment period shall be 12 months. In general, enrollment will be effective on the first day of the month following expiration of the open season enrollment period. Enrollees must remain in Prime for a 12 month period, at which time they may disenroll. This requirement is subject to exceptions for change of residence and other changes announced at the time the TRICARE Program is implemented in a particular area.

(3) *Periodic revision.* Periodically, certain features, rules or procedures of Prime, Extra and/or Standard may be revised. If such revisions will have a significant effect on participants' costs or access to care, beneficiaries will be given the opportunity to change their enrollment status coincident with the revisions.

(4) *Effects of failure to enroll.* Beneficiaries offered the opportunity to enroll in Prime, who do not enroll within the time provided to enroll, will be eligible to participate in Extra on a case-by-case basis or remain in Standard.

(p) *Civilian preferred provider networks.* A major feature of the TRICARE Program is the civilian preferred provider network.

(1) *Status of network providers.* Providers in the preferred provider network are not employees or agents of the Department of Defense or the United States Government. Rather, they are independent contractors of the government (or other independent entities having business arrangements with the government). Although network providers must follow numerous rules and procedures of the TRICARE Program, on matters of professional judgment and professional practice, the network provider is independent and not operating under the direction and control of the Department of Defense. Each preferred provider must have adequate professional liability insurance, as required by the Federal Acquisition Regulation, and must agree to indemnify the United States government for any liability that may be assessed against the United States government that is attributable to any action or omission of the provider.

(2) *Utilization management policies.* Preferred providers are required to follow the utilization management policies and procedures of the TRICARE Program. These policies and procedures are part of discretionary judgments by the Department of Defense regarding the methods of delivering and financing health care services that will best achieve health and economic policy objectives.

(3) *Quality assurance requirements.* A number of quality assurance requirements and procedures are applicable to preferred network providers. These are for the purpose of assuring that the health care services paid for with government funds meet the standards called for in the contract or provider agreement.

(4) *Provider qualifications.* All preferred providers must meet the following qualifications:

(i) They must be CHAMPUS authorized providers and CHAMPUS participating providers.

(ii) All physicians in the preferred provider network must have staff privileges in a hospital accredited by the Joint Commission on Accreditation of Health Care Organizations. This requirement may be waived in any case in which a physician's practice does not include the need for admitting privileges in such a hospital. However, in any case in which the requirement is waived, the physician must comply with alternative qualification standards as are established by the MTF Commander (or other authorized official).

(iii) All preferred providers must agree to follow all quality assurance and utilization management procedures established pursuant to this section, make available to designated DoD utilization management or quality monitoring contractors medical records and other pertinent records, and to authorize the release of information to MTF Commanders regarding such quality assurance and utilization management activities.

(iv) All preferred network providers must be Medicare participating providers, unless this requirement is waived based on extraordinary circumstances. This requirement that a provider be a Medicare participating provider does not apply to providers not eligible to be participating providers under Medicare.

(v) The provider must be available to Extra participants.

(vi) The provider must agree to accept the same payment rates negotiated for Prime enrollees for any person whose care is reimbursable by the Department of Defense, including, for example, Extra participants, supplemental care cases, and beneficiaries from outside the area.

(vii) All preferred providers must meet all other qualification requirements, and agree to comply with all other rules and procedures established for the preferred provider network.

(5) *Access standards.* Preferred provider networks will have attributes of size, composition, mix of providers and geographical distribution so that the networks, coupled with the MTF capabilities, can adequately address the health care needs of the enrollees. Before offering enrollment in Prime to a beneficiary group, the MTF Commander (or other authorized person) will assure that the capabilities of the MTF plus preferred provider network will meet the following access standards with respect to the needs of the expected number of enrollees from the beneficiary group being offered enrollment:

(i) Under normal circumstances, enrollee travel time may not exceed 30 minutes from home to primary care delivery site unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area.

(ii) The wait time for an appointment for a well-patient visit or a specialty care referral shall not exceed four weeks; for a routine visit, the wait time for an appointment for a well-patient visit shall not exceed two weeks; and for an urgent care visit the wait time for an appointment shall generally not exceed 24 hours.

(iii) Emergency services shall be available and accessible to handle emergencies (and urgent care visits if not available from other primary care providers pursuant to paragraph (p)(5)(ii) of this section), within the service area 24 hours a day, seven days a week.

(iv) The network shall include a sufficient number and mix of board certified specialists to meet reasonably

the anticipated needs of enrollees. Travel time for specialty care share not exceed one hour under normal circumstances, unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area. This requirement does not apply under the Specialized Treatment Services Program.

(v) Office waiting times in nonemergency circumstances shall not exceed 30 minutes.

(6) *Special reimbursement methods for network providers.* The Director, OCHAMPUS may establish for preferred provider networks reimbursement rates and methods different from those established pursuant to § 199.14. Such provisions may be expressed in terms of percentage discounts off CHAMPUS allowable amounts, or in other terms. In circumstances in which payments are based on hospital-specific rates (or other rates specific to particular institutional providers), special reimbursement methods may permit payments based on discounts off national or regional prevailing payment levels, even if higher than particular institution-specific payment rates.

(7) *Methods for establishing preferred provider networks.* There are several methods under which the MTF Commander (or other authorized official) may establish a preferred provider network. These include the following:

(i) There may be an acquisition under the Federal Acquisition Regulation, either conducted locally for that catchment area, in a larger area in concert with other MTF Commanders, regionally as part of a CHAMPUS acquisition, or on some other basis.

(ii) To the extent allowed by law, there may be a modification by the Director, OCHAMPUS of an existing CHAMPUS fiscal intermediary contract to add TRICARE Program functions to the existing responsibilities of the fiscal intermediary contractor.

(iii) The MTF Commander (or other authorized official) may follow the any qualified provider method set forth in paragraph (q) of this section.

(iv) Any other method authorized by law may be used.

(q) *Preferred provider network establishment under any qualified provider method.* The any qualified provider method may be used to establish a civilian preferred provider network. Under this method, any CHAMPUS-authorized provider within the geographical area involved that meets the qualification standards established by the MTF Commander (or other authorized official) may become a part of the preferred provider network. Such standards must be publicly announced and uniformly applied. Any provider that meets all applicable qualification standards may not be excluded from the preferred provider network. Qualifications include:

(1) The provider must meet all applicable requirements in paragraph (p)(4) of this section.

(2) The provider must agree to follow all quality assurance and utilization management procedures established pursuant to this section.

(3) The provider must be a Participating Provider under CHAMPUS for all claims.

(4) The provider must meet all other qualification requirements, and agree to all other rules and procedures, that are established, publicly announced, and uniformly applied by the commander (or other authorized official).

(5) The provider must sign a preferred provider network agreement covering all applicable requirements. Such agreements will be for a duration of one year, are renewable, and may be canceled by the provider or the MTF Commander (or other authorized official) upon appropriate notice to the other party. The Director, OCHAMPUS shall establish an agreement model or other guidelines to promote uniformity in the agreements.

(r) *General fraud, abuse, and conflict of interest requirements under TRICARE Program.* All fraud, abuse, and conflict of interest requirements for the basic CHAMPUS program, as set forth in this part 199 (see especially applicable provisions of § 199.9) are applicable to the TRICARE Program. Some methods and procedures for implementing and enforcing these requirements may differ from the methods and procedures followed under the basic CHAMPUS program in areas in which the TRICARE Program has not been implemented.

(s) *Partial implementation.* The Assistant Secretary of Defense (Health Affairs) may authorize the partial implementation of the TRICARE Program. In such cases, the TRICARE Extra Plan and the TRICARE Standard Plan may be offered without the TRICARE Prime Plan. Partial implementation may also consist of establishment of a TRICARE Program limited to particular services, such as mental health services.

(t) *Inclusion of Department of Veterans Affairs Medical Centers in TRICARE networks.* TRICARE preferred provider networks may include Department of Veterans Affairs Medical Centers pursuant to arrangements between those centers and the Director, OCHAMPUS or designated TRICARE contractor.

(u) *Care provided outside the United States to dependents of active duty members.* The Assistant Secretary of Defense (Health Affairs) may, in conjunction with implementation of the TRICARE program, authorize a special CHAMPUS program for dependents of active duty members who accompany the members in their assignments in foreign countries. Under this special program, contracts or agreements may be made with health care providers under which services will be provided to the covered dependents with the requirements for deductibles and copayments waived or reduced.

(v) *Administrative procedures.* The Assistant Secretary of Defense (Health Affairs), the Director, OCHAMPUS, and MTF Commanders (or other authorized officials) are authorized to establish administrative requirements and procedures, consistent with this section, this part and other applicable DoD Directives or Instructions, for the implementation and operation of the TRICARE Program.

**§ 199.18 Uniform HMO Benefit.**

(a) *In general.* There is established a Uniform HMO Benefit. The purpose of the Uniform HMO Benefit is to establish a health benefit option modeled on health maintenance organization plans. This benefit is intended to be uniform throughout the United States and to be included in all managed care programs under the MHSS. Most care purchased from civilian health care providers (outside a military medical treatment facility) will be under the rules of the Uniform HMO Benefit or the Basic CHAMPUS Program (see § 199.4). The Uniform HMO benefit shall apply only as specified in this section or other sections of this part, and shall be subject to any special applications indicated indicated in such other sections.

(b) *Services covered under the Uniform HMO Benefit option.* (1) Except as specifically provided or authorized by this section, all CHAMPUS benefits provided, and benefit limitations established, pursuant to this part shall apply to the Uniform HMO Benefit.

(2) Certain preventive care services not normally provided as part of basic program benefits under CHAMPUS are covered benefits when provided to Plan enrollees by providers in the civilian provider network. Such standards shall establish a specific schedule, including frequency or age specifications for:

(i) Laboratory and x-ray tests, including blood lead, rubella, cholesterol, fecal occult blood testing, and mammography;

(ii) Pap smears;
(iii) Eye exams;
(iv) Immunizations;
(v) Periodic health promotion and disease prevention exams;
(vi) Blood pressure screening;
(vii) Hearing exams;
(viii) Sigmoidoscopy or colonoscopy;
(ix) Serologic screening; and
(x) Appropriate education and counseling services. The exact services offered shall be established under uniform standards established by the Assistant Secretary of Defense (Health Affairs).

(3) In addition to preventive care services provided pursuant to paragraph (b)(2) of this section, other benefit enhancements may be added and other benefit restrictions may be waived or relaxed in connection with health care services provided to include the Uniform HMO Benefit. Any such other enhancements or changes must be approved by the Assistant Secretary of Defense (Health Affairs) based on uniform standards.

(c) *Enrollment fee under the uniform HMO benefit.* (1) The CHAMPUS annual deductible amount (see § 199.4(f)) is waived under the Uniform HMO Benefit during the period of enrollment. In lieu of a deductible amount, an annual enrollment fee is applicable. The specific enrollment fee requirements shall be published annually by the Assistant Secretary of Defense (Health Affairs), and shall be uniform within the following groups: Dependents of active duty members in pay grades E–4 and below; active duty dependents of sponsors in pay grades E–5 and above; and retirees and their dependents.

(2) *Amount of enrollment fees.* Beginning in fiscal year 1995, the annual enrollment fees are:

(i) for dependents of active duty members in pay grades of E–4 and below, $0;

(ii) for active duty dependents of sponsors in pay grades E–5 and above, $0; and,

(iii) for retirees and their dependents, $230 individual, $460 family.

(d) *Outpatient cost sharing requirements under the Uniform HMO Benefit*—(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special reduced cost sharing percentages or per service specific dollar amounts are required. The specific requirements shall be uniform and shall be published annually by the Assistant Secretary of Defense (Health Affairs).

(2) *Structure of outpatient cost sharing.* The special cost sharing requirements for outpatient services include the following specific structural provisions:

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: Dependents of active duty members in pay grades E–1 through E–4; dependents of active duty members in pay grades of E–5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies to ancillary services (unless provided as part of an office visit for which a copayment is collected), family health services, home health care visits, eye examinations, and immunizations.

(ii) There is a copayment for outpatient mental health visits. It is a per visit fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents for individual visits. For group visits, there is a lower per visit fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(iii) There is a cost share for durable medical equipment, prosthetic devices, and other authorized supplies for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(iv) For emergency room services, there is a per visit fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(v) For primary surgeon services in ambulatory surgery, there is a per service fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(vi) There is a copayment for prescription drugs per prescription, including medical supplies necessary for administration, for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(vii) There is a copayment for ambulance services for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(3) *Amount of outpatient cost sharing requirements.* Beginning in fiscal year 1995, the outpatient cost sharing requirements are as follows:

(i) For most physician office visits and other routine services, as described in paragraph (d)(2)(i) of this section, the per visit fee is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $6;

(B) For dependents of active duty members in pay grades of E–5 and above, $12; and,

(C) For retirees and their dependents, $12.

(ii) For outpatient mental health visits, the per visit fee is as follows:

(A) For individual outpatient mental health visits:

(*1*) For dependents of active duty members in pay grades E–1 through E–4, $10;

(*2*) For dependents of active duty members in pay grades E–5 and above, $20; and,

(*3*) For retirees and their dependents, $25.

(B) For group outpatient mental health visits, there is a lower per visit fee, as follows:

(*1*) For dependents of active duty members in pay grades E–1 through E–4, $6;

(*2*) For dependents of active duty members in pay grades E–5 and above, $12; and,

(*3*) For retirees and their dependents, $17.

(iii) The cost share for durable medical equipment, prosthetic devices, and other authorized supplies is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, 10 percent of the negotiated fee;

(B) For dependents of active duty members in pay grades E–5 and above, 15 percent of the negotiated fee; and,

(C) For retirees and their dependents, 20 percent of the negotiated fee.

(iv) For emergency room services, the per visit fee is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $10;

(B) For dependents of active duty members in pay grades of E–5 and above, $30; and,

(C) For retirees and their dependents, $30.

(v) For primary surgeon services in ambulatory surgery, the per service fee is as follows:

(A) For dependents of active duty members in pay grades of E–1 through E–4, $25;

(B) For dependents of active duty members in pay grades of E–5 and above, $25; and,

(C) For retirees and their dependents, $25.

(vi) The copayment for prescription drugs per prescription, for a maximum 30-day supply, is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $5;

(B) For dependents of active duty members in pay grades of E–5 and above, $5; and,

(C) For retirees and their dependents, $9.

(vii) The copayment for ambulance services is as follows:

(A) For dependents of active duty members in pay grades of E–1 through E–4, $10;

(B) For dependents of active duty members in pay grades of E–5 and above, $15; and,

(C) For retirees and their dependents, $20.

(e) *Inpatient cost sharing requirements under the Uniform HMO Benefit.*—(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special cost sharing amounts are required. The specific requirements shall be uniform and shall be published as a notice annually by the Assistant Secretary of Defense (Health Affairs).

(2) *Structure of cost sharing.* For services other than mental illness or substance use treatment, there is a nominal copayment for active duty dependents and for retired members, dependents of retired members, and survivors. For inpatient mental health and substance use treatment, a separate per day charge is established.

(3) *Amount of inpatient cost sharing requirements.* Beginning in fiscal year 1995, the inpatient cost sharing requirements are as follows:

(i) For acute care admissions and other non-mental health/substance use treatment admissions, the per diem charge is as follows, with a minimum charge of $25 per admission:

(A) For dependents of active duty members in pay grades E–1 through E–4, $11;

(B) For dependents of active duty members in pay grades of E–5 and above, $11; and,

(C) For retirees and their dependents, $11.

(ii) For mental health/substance use treatment admissions, and for partial hospitalization services, the per diem charge is as follows, with a minimum charge of $25 per admission:

(A) For dependents of active duty members in pay grades E–1 through E–4, $20;

(B) For dependents of active duty members in pay grades of E–5 and above, $20; and,

(C) For retirees and their dependents, $40.

(f) *Updates.* The enrollment fees for fiscal year 1995 set under paragraph (c) of this section and the per services specific dollar amounts for fiscal year 1995 set under paragraphs (d) and (e) of this section may be updated for subsequent years to the extent necessary to maintain compliance with statutory requirements pertaining to government costs. This updating does not apply to cost sharing that is expressed as a percentage of allowable charges; these percentages will remain unchanged.

(g) *Applicability of the Uniform HMO Benefit to Uniformed Services Treatment Facilities Managed Care Program.* The provisions of this section concerning the Uniform HMO Benefit shall apply to the Uniformed Services Treatment Facilities Managed Care Program, effective October 1, 1995. Under that program, non-CHAMPUS eligible beneficiaries have the same payment responsibilities as CHAMPUS-eligible beneficiaries.

Dated: February 2, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–3028 Filed 2–7–95; 8:45 am]

BILLING CODE 5000–04–M

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## ASSASSINATION RECORDS REVIEW BOARD

### 36 CFR Part 1400

### Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

**AGENCY:** Assassination Records Review Board (ARRB).

**ACTION:** Proposed interpretive regulation.

**SUMMARY:** The ARRB proposes to issue regulations providing guidance on the interpretation of certain terms defined in and the implementation of the President John F. Kennedy Assassination Records Collection Act of 1992.

**DATES:** To be considered, comments must be received on or before March 10, 1995.

**ADDRESSES:** Comments should be mailed to the Assassination Records Review Board at 600 E Street, NW, Second floor, Washington, D.C. 20530 or delivered in person to that address between the hours of 9:30 a.m. and 4:30 p.m., Monday through Friday (except legal holidays). Comments may also be faxed to the Board at (202) 724–0457. Comments received may be inspected in the Board's public reading room, located at the address shown above, between 10 a.m. and 3 p.m. Monday through Friday (except legal holidays). Persons wishing to inspect comments in the Board's public reading room should call the Board's office beforehand at (202) 724–0088 for further information.

**FOR FURTHER INFORMATION CONTACT:** Sheryl L. Walter (General Counsel), (202) 724–0088.

**SUPPLEMENTARY INFORMATION:**

### Background

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 note (as amended) (ARCA), established the President John F. Kennedy Assassination Records Collection (the JFK Collection) at the National Archives and Records Administration (NARA). In establishing the process for public disclosure of all records relating to the assassination, Congress created an independent agency within the executive branch, the Assassination Records Review Board (the Board), which consists of five citizens appointed by the President. Under the statute, the Board is empowered to decide ''whether a record constitutes an assassination record.'' 44 U.S.C. 2107 note, Sec. 7(i)(2)(A). Congress further made clear its intent that the Board ''issue guidance to assist in articulating the scope or universe of assassination records.'' President John F. Kennedy Assassination Records Collection Act of 1992, S.Rep. 102–328, 102d Cong., 2d Sess. (1992) at 21.

In constructing the proposed guidance set out here, the Board seeks to implement congressional intent that the JFK Collection contain ''the most comprehensive disclosure of records related to the assassination of President Kennedy.'' *Id.* at 18. The Board is also mindful of Congress's instruction that the Board apply a ''broad and encompassing'' working definition of ''assassination record'' in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies have already begun to organize and review records responsive to the ARCA even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public

disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquires into it.

The Board's proposed guidance is designed to help government agencies and the Board identify and make available to the public all documents that will enhance, enrich, and broaden the historical record of the assassination of President John F. Kennedy. The Board seeks through this guidance to fulfill Congress's ''inten[t] and emphasis that the search and disclosure of records under this Act must go beyond'' the records of previous commissions and committees established to investigate President Kennedy's assassination. *Id.* at 21. The Board also seeks to provide notice of the scope of its intended exercise of authority to seek additional information or records in order to fulfill its functions and responsibilities under the ARCA.

In addition, the Board proposes to create a mechanism to facilitate the Board's ongoing work and to further ensure future public access to the broadest possible historical record. This mechanism will be known as the ''Catalog of Assassination Records'' (COAR). The COAR is intended to be an official listing of all records determined by the Board to meet the definition of ''assassination record'' and included in the JFK Collection.

**Request for Comments**

The Board seeks public comment on its proposed interpretive regulations intended to provide guidance on the interpretation of the term assassination record, the intended scope of its exercise of authority to seek additional information or records, and its additional proposals for implementation of the ARCA.

**List of Subjects in 36 CFR Part 1400**

Administrative practice and procedure, Archives and records.

Accordingly, the Assassination Records Review Board hereby proposes to establish a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:

**CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD**

## PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (ARCA)

Sec.

1400.1 Interpretation of assassination record.
1400.2 Interpretation of additional records and information.
1400.3 Sources of assassination records and additional records and information.
1400.4 Types of materials included in scope of assassination record and additional records and information.
1400.5 Requirement that assassination records be released in their entirely.
1400.6 Originals and copies.
1400.7 Additional guidance.
1400.8 Implementing the ARCA—Catalog of Assassination Records

**Authority:** 44 U.S.C. 2107 note.

### § 1400.1 Interpretation of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report, analyze, or interpret activities and events that may have led to the assassination of President John F. Kennedy; the assassination itself; and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Sec. 3(2) of the ARCA;

(2) All records called by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Catalog of Assassination Records, as described in § 1400.8 of this chapter.

### § 1400.2 Interpretation of additional records and information.

The term *additional information and records* includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, records, and other material that disclose cryptonyms, code names, or other identification material in assassination records.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization; and

(3) Storage facilities and locations.

### § 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the federal government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;

(g) Federal, state, and local courts where such records are being held under seal; or

(h) Foreign governments.

### § 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in assassination record and additional records and information includes, for purposes of interpreting and implementing the ARCA:

(a) Papers, maps, and other documentary material;

(b) Photographs;

(c) Motion pictures;

(d) Sound and video recordings;

(e) Machine readable information in any form; and

(f) Artifacts.

**§ 1400.5 Requirement that assassination records be released in their entirety.**

An assassination record shall be disclosed in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in section 6 of the ARCA, and no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance.

**§ 1400.6 Originals and copies.**

(a) For purposes of determining whether originals or copies of assassination records may be made part of the President John F. Kennedy Assassination Records Collection (the JFK Records Collection) to be established under the ARCA:

(1) In the case of papers, maps, and other documentary material, the Assassination Records Review Board (the Board) may determine that a true and accurate copy of the original is sufficient;

(2) In the case of photographs, the term record means the original negative if available, otherwise, the earliest generation print;

(3) In the case of motion pictures, the term record means the camera original if available, otherwise, the earliest generation print;

(4) In the case of sound and video recordings, the term record means the original recording, if available, otherwise, the earliest generation copy;

(5) In the case of machine-readable information, the Board may determine that a true and accurate copy of the original is sufficient; and

(6) Artifacts means the original object itself.

(b) In cases where a copy, as defined in paragraph (a) of this section is authorized by the Board to be included in the JFK Records Collection the Board may, at its discretion, require a certified copy. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Records Collection the Board may, at its discretion, accept the best available copy.

**§ 1400.7 Additional guidance.**

(a) A government *agency, office,* or *entity* includes, for purposes of interpreting and implementing the ARCA, all departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely for purposes of establishing the President John F. Kennedy Assassination Records Collection and for fully implementing the terms of the ARCA and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) In the case of artifacts deemed to be assassination records and included in the John F. Kennedy Assassination Records Collection, provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request. Other display to or examination by the public of artifacts in the John F. Kennedy Assassination Records Collection shall occur under terms and conditions established by the National Archives and Records Administration that are adequate to preserve and protect the artifacts for posterity.

(d) The terms *and, or, any, all,* and the plural and singular forms of nouns shall be understood in their broadcast and most inclusive sense and shall not be understood to be terms of limitation. Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword, symbol, number, cryptonym or alias. Any record described with respect to an operation or program includes any record pertaining to that program by any other name, pseudonym, codeword, symbol, number or cryptonym.

**§ 1400.8 Implementing the ARCA—Catalog of Assassination Records.**

(a) A Catalog of Assassination Records (COAR) shall be created as the official listing of all records determined by the Board to meet the definition of assassination record.

(b) Notice of all decisions to include records in the COAR will be published in the **Federal Register** within 30 days of the decision.

(c) In listing records or groups of records in the COAR, the Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: February 3, 1995.

**David G. Marwell,**

*Executive Director, Assassination Records Review Board.*

[FR Doc. 95–3112 Filed 2–7–95; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 51 and 93

**[FRL–5149–9]**

## Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to permanently align the timing of certain transportation conformity consequences with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan, and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program would not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action would delay the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete ozone implementation plans.

EPA has published in the final rule section of this **Federal Register** a similar interim final rule which takes effect immediately and applies for six months. This proposal would apply the provisions of the interim final rule permanently.

**DATES:** Comments on this action must be received by March 10, 1995. A public hearing will be held at 10:30 a.m. on February 22, 1995 in Washington, DC.

**ADDRESSES:** Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A–95–02, 401 M Street, SW., Washington, DC 20460.

A public hearing will be held at the Ramada Inn, 10 Thomas Circle NW, Washington DC.

Materials relevant to this proposal have been placed in Air and Radiation Docket A–95–02 by EPA. The docket is located at the above address in room M–1500 Waterside Mall (ground floor) and may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668–4441.

**SUPPLEMENTARY INFORMATION:** The terms and substance of the rule changes proposed in this document, and a description of the subjects and issues involved, are included in the document announcing the interim final rule published in the Final Rules Section of this **Federal Register**. This proposal is identical in substance to the interim final rule, except that the proposal would not limit the application of the proposed rule changes to a six-month period.

Dated: January 31, 1995.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 95–3002 Filed 2–7–95; 8:45 am]

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## 40 CFR Part 180

**[PP 5F4427/P606; FRL–4936–6]**

**RIN 2070–AC18**

## Pesticide Tolerance for Chlorpyrifos

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to establish a time-limited tolerance for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the raw agricultural commodities oats and barley when blended together in a mixture containing 97% oats and 3% barley. The proposal to establish maximum permissible levels for residues of the insecticide was requested in a petition submitted by General Mills.

**DATES:** Comments, identified by the document control number, [PP 5F4427/P606], must be received on or before March 10, 1995.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of November 21, 1994 (59 FR 60013), which announced that General Mills had submitted pesticide petition (PP) 5F4427 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, amend 40 CFR 180.342 by establishing a tolerance for residues of the insecticide chlorpyrifos in or on the raw agricultural commodity oats at 15 ppm, provided that such tolerance applies only to oats that were treated post-harvest with chlorpyrifos on or before June 15, 1994; that such tolerance applies only to oats to be used as animal feed or as a constituent of animal feed; that, notwithstanding any other provision of law or regulation, this tolerance does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes; and that such tolerance expires on December 31, 1996.

Chlorpyrifos is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for application to many growing crops; associated tolerance regulations have been established under the FFDCA. It is not, however, registered for use on oats or for treatment of stored grain. A pest control operator under contract to General Mills improperly treated stored oats and fraudulently claimed to have used a different pesticide, chlorpyrifos-methyl, that is registered for use on stored grains such as oats. The illegal residues were discovered by a routine FDA inspection. Processed food products manufactured from improperly treated oats were determined by the Agency not to be a human health hazard and those that had entered commerce were not recalled. Processed products that had not yet entered commerce were retained by General Mills and subsequently destroyed. Approximately 18 million bushels of stored unmilled oats treated with chlorpyrifos are at present controlled by General Mills or its customers. Although the Agency has determined that the use of the stored oats for the production of food does not constitute a human health hazard, no approval has been sought by General Mills to use the treated oats for human food purposes.

Chlorpyrifos is registered for use on other crops that are used for livestock or poultry feed purposes. General Mills has submitted data to demonstrate that the use of treated oats for livestock or poultry feed will not yield residues in meat, milk, or eggs that exceed existing tolerances for chlorpyrifos in these commodities. To ensure that the oats will be unacceptable for human food production, General Mills has stated that they will be blended to include not less than 3% barley and 97% oats. Accordingly, the definition of the raw agricultural commodity in the petition has been amended to ''oats and barley when blended together in a mixture containing 97% oats and 3% barley.''

There were no comments or requests for a referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. Toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect-level (NOEL) for systemic effects of 1.0 milligram (mg)/kilogram (kg)/day and lowest-effect-level (LEL) (increased liver weight) of 3.0 mg/kg/day. The NOELs for cholinesterase (ChE) inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells. Levels tested were 0, 0.01, 0.03, 0.1, 1.0, and 3 mg/kg/day.

2. A voluntary human study with chronic ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse chronic toxicity/carcinogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0, 0.5, 5, and 15 ppm, equivalent to 0.075, 0.75, and 2.25 mg/kg/day).

4. A voluntary human study with acute ChE NOEL of 0.10 mg/kg/day (based on daily single-dose exposures of 0, 0.014, 0.03, or 0.10 mg/kg/day) determined at 1, 3, 6, and 9 days of treatment.

5. A 2-year rat feeding/carcinogenicity study with ChE NOEL of 0.1 and LEL of 1.0 mg/kg/day (based on decreased plasma and brain ChE activity), and a systemic NOEL of 1.0 mg/kg/day and LEL of 10 mg/kg/day (based on decreased erythrocyte and hemoglobin values and increased platelet count during the first year). There were no observed carcinogenic effects at the levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study. Chlorpyrifos is classified as a Group E chemical (no evidence of carcinogenicity).

6. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

7. Two rat developmental toxicity studies: one negative for developmental toxicity at all dose levels (levels tested were 0.1, 3.0, and 15.0 mg/kg/day); and one with maternal NOEL of 15 mg/kg/day and developmental NOEL of 2.5 mg/kg/day (levels tested, by gavage, were 0, 0.5, 2.5, and 15 mg/kg/day).

8. A mouse developmental toxicity study with a teratogenic NOEL greater than 25 mg/kg/day (highest dose tested) and a developmental fetotoxic NOEL of 10 mg/kg/day and LEL of 25 mg/kg/day (decreased fetal length and increased skeletal variants).

9. A developmental toxicity study in rabbits with maternal and developmental NOELs of 81 mg/kg/day, and maternal and developmental LELs of 140 mg/kg/day (based on maternal decreased food consumption on gestation day 15 to 19, and body weight loss during the dosing period followed by a compensatory weight gain; and based on a slight reduction in fetal weights and crown-rump lengths, and fetal increased incidence of unossified fifth sternebrae and/or xiphisternum). Levels tested were 0, 1, 9, 81, and 140 mg/kg/day.

10. An acute delayed neurotoxicity study in the hen that was negative at 50 and 100 mg/kg/day.

11. Several mutagenicity studies which were all negative. These include an Ames assay, two Chinese hamster ovary cell mutation assays, a micronucleus assay for chromosomal aberration, an in vitro chromosomal aberration assay with and without enzymatic activation, and an unscheduled DNA synthesis assay.

12. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is 3,5,6-trichloro-2-pyridinol (TCP). The studies listed below were conducted to demonstrate that TCP is less toxic than chlorpyrifos and is not a ChE inhibitor.

a. A 90-day rat feeding study with a systemic NOEL of 30 mg/kg/day. Levels tested were 0, 10, 30, and 100 mg/kg/day.

b. A rat developmental toxicity study with no developmental toxicity observed at the dosages tested (0, 50, 100, and 150 mg/kg/day).

c. Mutagenicity studies (including an Ames assay and an unscheduled DNA synthesis assay) were negative for mutagenic effects.

Based on the above studies, the Agency has concluded that the TCP metabolite is not of toxicological concern.

For the assessment of chronic dietary risk, the reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. Tolerances for food uses appear in 40 CFR 180.342 and 40 CFR 185.1000. The Dietary Risk Exposure Section (DRES) used, when justified and appropriate, anticipated residues rather than published tolerance values, and data regarding percent crop treated (when less than 100%). The anticipated residue contribution (ARC) from published uses of chlorpyrifos is 0.000860 mg/kg of body weight/day for the overall U.S. population. This represents 28.7% of the RfD. None of the DRES subgroups has an exposure that exceeds the RfD. The population subgroup most highly exposed is nonnursing infants, less than 1 year old, with an ARC from published uses of 0.002147 mg/kg of body weight/day, 71.6% of the RfD. The next most highly exposed population subgroup is children, 1 to 6 years old, with an ARC from published uses of 0.001914 mg/kg of body weight/day, 63.8% of the RfD. The proposed tolerance on oats does not raise the ARC as a percentage of the RfD because the oats are not to be used for human food and any secondary residues occurring in milk, eggs, or meat of livestock and poultry will fall within existing tolerances for these commodities. The ARC was calculated assuming tolerance level residues of chlorpyrifos on these commodities.

The DRES detailed acute analysis estimates the distribution of single-day exposures for the overall U.S. population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1977-1978 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of chlorpyrifos in the commodity (oats). Since the toxicological endpoint to which exposure is being compared in this analysis is neurotoxicity, four human population subgroups (infants, less than 1 year old; children, 1 to 12 years old; females, 13 years old and older; males, 13 years old and older), as well as the overall population, are of interest.

The Margin of Exposure (MOE) is a measure of how close the high-end exposure comes to the NOEL and is calculated as the ratio of the NOEL to the exposure. (NOEL/exposure = MOE.) For neurotoxicity, the Agency is generally not concerned unless the MOE is below 10 when the NOEL is based on human data. For the overall population the calculated MOE at high end (top-most eaters—defined as the top 0.5% of the population in terms of consumption) as a result of all commodities, other than oats, treated with chlorpyrifos is less than 10. In the overall population 6% of consumers have an MOE less than 10.

The DRES analysis to estimate the potential increased risk of neurotoxicity resulting from residues of chlorpyrifos in meat, poultry, eggs, and milk obtained from animals fed treated oats indicates that the MOE is greater than 10 for the overall U.S. population and for each of the 4 population subgroups. The calculated MOE at high end (top-most eaters—in this case defined as the top 0.5% of the population/subpopulation in terms of consumption) for the overall population is 33; for infants, less than 1 year old it is 20; for children, 1 to 12 years old it is 25; for females, 13 years old and older it is 83; and for males, 13 years old and older it is 71.

The Margin of Exposure estimates are considered conservative because a major assumption is that the high-end eater consumed only meat, poultry, eggs, and/or milk from animals fed only oats containing chlorpyrifos residues. The increase in calculated estimates of acute

risk from chlorpyrifos residues as a result of the proposed temporary tolerance would be negligible.

The petition for a tolerance has resulted from a misuse of chlorpyrifos, and the Agency does not generally grant a tolerance to cover misuse. The following points, however, were considered. The petitioner was not directly responsible for the misuse. Although human food produced from the treated chlorpyrifos was not determined by the Agency to be a human health hazard, the petitioner has not sought approval for use of the treated oats as human food and destroyed all human food made from the treated oats that had not entered commerce. The tolerance is time limited. Finally, if this tolerance is not approved, 18 million bushels of oats, or approximately 15% of the privately held U.S. stocks, will have to be destroyed despite EPA's conclusion that use of the oats as an animal feed protects the public health.

To ensure that the oats are used as an animal feed, EPA has amended the commodity definition from ''the raw agricultural commodity oats'' to ''the raw agricultural commodities oats and barley when blended together in a mixture containing 97% oats and 3% barley.'' Blending barley with oats will make the oats unsuitable for milling to produce human food. The petitioner has agreed to blend barley into the treated oats prior to sale or distribution.

The nature of the residue in plants and animals is adequately understood. Adequate methodology is available for enforcement purposes and for analysis of chlorpyrifos in oat grain. The FDA Pestrack data base (PAM Vol. I, January, 1994) indicates that complete recovery has been obtained for chlorpyrifos under FDA multiresidue methods 302 and 303, and partial recovery has been obtained with method 304.

The pesticide is considered useful for the purpose for which the tolerance is sought.

There are currently no actions pending against continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 5F4427/P606]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-54, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.342, by adding new paragraph (f), to read as follows:

**§ 180.342 Chlorpyrifos; tolerances for residues.**

* * * * *

(f) A tolerance of 15 ppm is established for residues of the pesticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the raw agricultural commodities oats and barley when blended together as a mixture containing 97% oats and 3% barley.

(1) Such tolerance applies only to oats that were treated post-harvest with chlorpyrifos on or before June 15, 1994.

(2) Such tolerance applies only to oats to be used as animal feed or as a constituent of animal feed.

(3) Notwithstanding any other provision of law or regulation, this tolerance does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes.

(4) Such tolerance expires on December 31, 1996.

[FR Doc. 95–3206 Filed 2–3–95; 5:06 pm]

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## 40 CFR Parts 185 and 186

**[FAP 3H5673, 4H5695, 4H5696/P591; FRL–4915–1]**

**RIN 2070–AC18**

## Food and Feed Additive Regulations for d-Limonene, Dihydro-5-Pentyl-2(3H)-Furanone, and Dihydro-5-Heptyl-2(3H)-Furanone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to establish food/feed additive regulations for residues of the insecticides d-limonene, dihydro-5-pentyl-2(3H)-furanone, and dihydro-5-heptyl-2(3H)-furanone when used as active ingredients in insect-repellent tablecloths and in insect-

repellent strips used in food/feed-handling establishments. Rod Products Co. requested these regulations.

**DATES:** Comments, identified by the document control number, [FAP 3H5673, 4H5695, 4H5696/P591], must be received on or before March 10, 1995.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert A. Forrest, Product Manager (PM 14), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54356), which announced that Rod Products Co., 4600 Glencoe Ave., No. 4, Marina del Rey, CA 90292-6363, had submitted to EPA food/feed additive petitions (FAPs) 3H5673, 4H5695, and 4H5696, which requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, amend 40 CFR parts 185 and 186 by establishing regulations for residues of d-limonene, dihydro-5-pentyl-2(3H)-furanone, and dihydro-5-heptyl-2(3H)-furanone when used as active ingredients in insect-repellent tablecloths used in food/feed-handling establishments. The registrant subsequently requested the addition of insect repellent strips used in food/feed-handling establishments.

d-Limonene is listed under 21 CFR 182.60 as generally recognized as safe (GRAS) when used as a synthetic flavoring substance and adjuvant in accordance with good manufacturing practice.

Dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone are approved for use as direct food additives and are listed under 21 CFR 172.515 as synthetic flavoring substances and adjuvants which may be safely used in food provided they are used in the minimum quantity required to produce their intended effect and are otherwise used in accordance with all the principles of good manufacturing practice.

The information submitted in the petitions and all other relevant material have been evaluated. Data on the oral toxicity of d-limonene was summarized in the National Toxicology Program (NTP) 2-year bioassay and comprehensive literature review. The systemic toxicity of d-limonene is comparatively low; effects are observed only at relatively high doses even after long-term exposure. Effects at high doses in laboratory animals would include reduced body weight gain, sometimes with clinical signs (lethargy, excess salivation, nausea/vomiting), skeletal variations in fetuses, maternal decreases in body weight gain, and dermal irritation. D-limonene is not carcinogenic or mutgenic or a developmental toxicant.

The toxciological data considered in support of the product registrations included the following product-specific studies utilizing all three insecticides in combination as the test material: acute oral toxicity in the rat, acute dermal toxicity in the rabbit, primary eye irritation in the rabbit, acute inhalation toxicity in the rat, primary dermal irritation, and guinea pig sensitization. The Agency has concluded that these formulations were of minimal toxicological concern.

The Agency does not anticipate that significant oral exposure would occur from the use of these products. Based on the small amount that theoretically might be ingested if one ate food in contact with the insect repellent tablecloth, or chewed on the cloth itself, and on the apparent nontoxicity of very low amounts of these chemicals when ingested orally, the Agency considers the potential toxicity hazard from the insect repellent tablecloth to be minimal. The Agency also considers the potential toxicity hazard from the use of the insect repellent strip to be minimal given the assessment of the oral hazard associated with the active ingredients in the insect repellent strip, and the very limited direct food/feed contact as a result of its use.

There are currently no actions pending against the continued registration of the chemicals.

The pesticides are considered capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that establishing food/feed additive regulations by amending 40 CFR parts 185 and 186 will be safe. Therefore, it is proposed that they be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [FAP 3H5673, 4H5695, 4H5696/P591]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined

that this rule is not ''significant'' and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Parts 185 and 186**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 24, 1995.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

## PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

b. By adding new § 185.1975, 185.1985, and 185.3775, to read as follows:

**§ 185.1975 Dihydro-5-heptyl-2(3H)-furanone.**

The food additive dihydro-5-heptyl-2(3H)-furanone, may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 185.1985 Dihydro-5-pentyl-2(3H)-furanone.**

The food additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 185.3775 d-Limonene.**

The food additive d-limonene may be safely used in accordance with the following conditions:

(a) It is used with the active ingredients dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

## PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

b. By adding new §§ 186.1975, 186.1985, and 186.3775, to read as follows:

**§ 186.1975 Dihydro-5-heptyl-2(3H)-furanone.**

The feed additive dihydro-5-heptyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 186.1985 Dihydro-5-pentyl-2(3H)-furanone.**

The feed additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 186.3775 d-Limonene.**

The feed additive d-limonene may be safely used in accordance with the following conditions:

(a) It is used with the active ingredients dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone in insect repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 95–2731 Filed 2–7–95; 8:45 am]

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## 40 CFR Parts 261, 271, and 302

**[SWH–FRL–5151–8]**

**RIN 2050–AD80**

## Public Hearing on the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Industries

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of public hearing.

**SUMMARY:** On December 22, 1994 (see 59 FR 66072–114), the U.S. Environmental Protection Agency (EPA or Agency) proposed to list as hazardous five wastes generated during the production of dyes and pigments, proposed not to list six other wastes from these industries, and proposed to defer action on three wastes due to insufficient information. The public comment period for this proposed rule will end on March 22, 1995. The purpose of this notice is to announce the scheduling of a public hearing on this proposed rule in accordance with Section 3001(b) of the Resource Conservation and Recovery Act (RCRA), 42 USC 6921(a), and EPA's regulations at 40 CFR 25.5. The public hearing will be held on March 15, 1995, in Washington, DC. The purpose of the hearing is to give members of the regulated community and other interested parties opportunity to comment further on the proposal. All comments received at the hearing will be entered into the public record for this proposed rule.

**DATES:** The public hearing has been scheduled for Wednesday, March 15, 1995, at the U.S. Environmental Protection Agency Auditorium, 401 M Street SW., Washington, DC, from 12:30 pm to 5:00 pm. Persons interested in making oral statements must register by telephoning Jim Kent, U.S. EPA, Washington, DC, at (202) 260–6946. Requests to make oral statements must be received by March 1, 1995. Written and oral comments intended for the public hearing on the proposed rule will be accepted by the Hearing Officer only at the public hearing in Washington, DC, on March 15, 1995. If written comments are offered at the public hearing, three copies must be submitted, each identified at the top with the regulatory docket number F–95–DPLA–FFFFF.

**ADDRESSES:** The RCRA regulatory docket that contains the administrative record for this public hearing is located at Room 2616, U.S. EPA, 401 M Street SW., Washington, DC. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this notice, please contact Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7458. For information on administrative matters, or to advise of your intent to attend, please contact Jim Kent, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–6946.

**SUPPLEMENTARY INFORMATION:** This proposed rule was issued under Section 3001(b) of RCRA. EPA proposed to list certain wastes generated during the production of dyes and pigments because these wastes may pose a substantial present or potential risk to human health or the environment when improperly managed. See 59 FR 66072–114 (December 22, 1994) for a more detailed explanation of the proposed rule.

Since publication of this proposed rule, the Agency has received a request for a public hearing from the trade association representing the pigments industry, the Color Pigments Manufacturers Association. Since this public hearing will occur during the comment period, there is no extension granted to the existing comment period, which ends on March 22, 1995.

Dated: February 2, 1995.

**Michael H. Shapiro,**

*Director, Office of Solid Waste.*

[FR Doc. 95–3114 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 482

**[BPD–826–N]**

### Medicare Program; Hospice Wage Index

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces a meeting of the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The meeting is open to the public.

**DATES:** The meeting is scheduled for February 22, 1995, from 10 a.m. until 5 p.m. e.s.t., and February 23, 1995, from 9 a.m. until 3 p.m.

**ADDRESSES:** The meeting will be held at Room 5051 Cohen Building (The Snow Room), 300 C Street, S.W., Washington, DC 20201–0001.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Carter, (410) 966–4615.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Negotiated Rulemaking Act of 1990 (Pub. Law 101–648, 5 U.S.C. 581–590), the Secretary of the Department of Health and Human Services has established the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The Committee will make recommendations with respect to the content of a proposed rule on the wage index used to adjust payment rates for hospice care under the Medicare program to reflect local differences in area wage levels. The Committee consists of representatives of interests that are likely to be significantly affected by the proposed rule.

A meeting of the Committee will be held on February 22–23, 1995. The Committee will undertake the following activities:

- Review data runs on various wage index models.
- Discuss criteria to be used to evaluate data.
- Review issues in light of the data.
- Report on analysis of Bureau of Labor Statistics data.

Individuals or organizations who wish to attend the meeting or make oral presentations may do so. However, the number of presentations may be limited by the time available. Individuals may also submit written statements for the Committee's consideration. For information on how to do this and to be put on a list to ensure access to the building, please contact the Committee facilitator, Judy Ballard at (202) 690–7419 by February 21, 1995.

(Section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: February 3, 1995.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 95–3252 Filed 2–7–95; 8:45 am]

BILLING CODE 4120–01–P

# Notices

Federal Register
Vol. 60, No. 26
Wednesday, February 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Processes

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of two meetings of the Committee on Governmental Processes of the Administrative Conference of the United States.

**DATES:** Tuesday, February 14, 1995, at 2:00 p.m., and Monday, March 13, 1995, at 12:30 p.m.

**LOCATION:** Office of the Chairman, Administrative Conference of the United States, Suite 500, 2120 L Street NW., Washington, D.C. (Library, 5th Floor).

**FOR FURTHER INFORMATION CONTACT:** Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, D.C. Telephone: (202) 254–7020.

**SUPPLEMENTARY INFORMATION:** The Committee will meet to continue discussion of when federal government lawyers and other government employees may participate in public service activities. There are possible restrictions in the Code of Professional Responsibility, in agency regulations governing outside activities, and in government-wide rules concerning use of government instrumentalities.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should call the Office of the Chairman of the Administrative Conference at least one day before the meeting. The committee chair, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available upon request.

Dated: February 2, 1995.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 95–3209 Filed 2–7–95; 8:45 am]

BILLING CODE 6110–01–W

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 95–008–1]**

### Availability of Environmental Assessment and Finding of No Significant Impact

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the shipment and field testing of an unlicensed veterinary biological product. Risk analyses, which form the basis for the environmental assessment, have led us to conclude that shipment and field testing of the unlicensed veterinary biological product will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

**ADDRESSES:** Copies of the environment assessment and finding of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analyses with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Nunley, State Director, Animal Damage Control, APHIS, USDA, PO Box 100410, San Antonio, Texas 78201–1710; Telephone: (210) 731–3451.

**SUPPLEMENTARY INFORMATION:** A veterinary biological product regulated under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

Rhone Merieux, Inc., and the State of Texas propose to distribute 850,000 coyote baits laden with an experimental recombinant rabies vaccine in a 13,000-square-mile area stretching from Maverick County, at the Mexican border, to Calhoun County, on the gulf coast. This would allow the State of Texas to continue the efficacy portion of the ongoing field project initially approved by APHIS in 1993. The specific objective of this proposal is to evaluate the efficacy of the experimental vaccine in maintaining a barrier of immunized coyotes to prevent the proliferation of coyote rabies.

In determining whether to authorize shipment and field testing of the unlicensed veterinary biological product referenced in this notice, APHIS conducted risk analyses to assess the product's potential effects on the safety of animals, public health, and the environment. Based on the risk analyses, APHIS has prepared an environmental assessment. APHIS has conducted that shipment and field testing of the unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement.

An environmental assessment and finding of no significant impact have been prepared for the shipment and field testing of the following unlicensed veterinary biological product:

| Requester | Product | Field test location |
|---|---|---|
| Texas Department of Health; Rhone Merieux, Inc.; and the Centers for Disease Control and Prevention. | A live, genetically engineered, vaccinia-vectored rabies vaccine that expresses the rabies glycoprotein; the vaccine is enclosed in baits. | Dimmit, Zavala, Frio, Bexar, Atascosa, Wilson, Karnes, Goliad, Refugio, Aransas, San Patricio, Bee, Live Oak, McMullen, La Salle, Calhoun, and Maverick Counties, Texas. |

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

Done in Washington, DC, this 1st day of February 1995.

**George O. Winegar,**

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

[FR Doc. 95–2897 Filed 2–7–95; 8:45 am]

**BILLING CODE 3410–34–M**

## Forest Service

## North Fork Fire Salvage and Associated Activities, Kootenai National Forest, Lincoln County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The North Fork, 336, and Maxine Wildfire burned over 8000 acres of Kootenai National Forest system lands in the late summer of 1994. The Forest intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environment effects of opportunities designed to recover economic value of burned timber, reduce future fuels accumulations and the corresponding risk of severe reburn, rehabilitate existing sediment sources, improve hydrologic conditions in affected watersheds, and protect long-term soil productivity. These objectives would be accomplished through salvage harvest of fire-killed timber; reforestation of harvested and several burned areas; fuels reduction in harvested areas; restoration of non-essential roads, revegetation of road cuts and fill slopes, and drainage improvement on existing roads; providing for immediate and long-term recruitment of instream large woodly material within the North Fork decision area. The North Fork decision area is located approximately 20 air miles southwest of Eureka, Montana.

All proposals within the North Fork decision area would protect visual quality on stream segments eligible for classification under the Wild and Scenic Rivers Act, provide for wildlife habitat, and conserve fisheries habitat.

The proposal's actions to salvage fire-killed trees and reforest burned area, construct, reconstruct, and restore roads, reduce fuels and future fire hazard, and implement watershed recovery projects are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The EIS will trier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired forest condition of the area.

**DATES:** Written comments and suggestions should be relieved by March 10, 1995.

**ADDRESSES:** The Responsible Official is Robert L. Schrenk, Forest Supervisor, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Robert J. Thompson, District Ranger, Rexford Ranger District, 1299 Hwy 93 N, Eureka, Montana, 59917.

**FOR FURTHER INFORMATION CONTACT:** Terry Chute, Planner, Rexford Ranger District. Phone (406) 296–2536.

**SUPPLEMENTARY INFORMATION:** During the night of August 14–15, 1994, a lightning stormed started 207 fires on the Kootenai National Forest in northwest Montana. Several fires ranging in size from less than one acre to over 7000 acres occurred on the Rexford Ranger District. The North Fork Fire Recovery EIS is being prepared in response to conditions resulting from the largest of these fires, the 8000+ acre North Fork Fire Complex. An interdisciplinary landscape analysis team is using an ecosystem based approach to assess the fires affects and identify management opportunities that could be implemented to move the postfire landscape toward a desired ecological condition.

Burn intensities in the North Fork wildfires varied considerably. Within the fire perimeters approximately 5350 acres burned at high intensity (average 90% tree mortality), 1400 burned at moderate intensity (average 70% mortality), and 1300 acres burned at low intensity (average 30% mortality). The fires burned into or adjacent to the Wild and Scenic study corridors in Big Creek and South Fork Big Creek (eligible for Recreation classification), and North Fork Big Creek and Copeland Creek (eligible for Wild classification), all of which are pending Wild and Scenic River study. The fires also burned within the Big Creek Roadless area #701.

The North Fork decision area contains approximately 36,000 acres within the Kootenai National Forest in Lincoln County, Montana. All of the proposed projects are located in the Big Creek drainage with sub-drainages of North Fork Big, South Fork Big, Good, Mesler, Roberts, Copeland, and Drop Creeks, included. The legal location of the decision area is as follows: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 29, and 30 of Township 34 North, Range 30 West; Sections 1, 2, 11, 12, 13, 14, and 24 of Township 34 North, Range 30 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of Township 35 North, Range 30 West; Sections 1, 12, 13, 14, 23, 24, 25, 26, 35, and 36 of Township 35 North, Range 31 West; and Sections 21 and 32 of Township 36 North, Range 30 West; Principle Montana Meridian. The land in and adjacent to the decision area is entirely federal ownership under the jurisdiction of the Forest Service.

### Proposed Action

The primary purpose of the project is to recover valuable timber products from trees burned by wildfires that occurred in 1994, with the secondary benefit of reducing the potential for future uncontrollable wildfires. Actions are also proposed to enhance watershed recovery and improve grizzly bear habitat security. The Forest Service proposes to harvest approximately 24–27 million board feet of timber by salvaging fire-killed timber and imminently dead trees on approximately 2119 acres of forest land outside riparian protection areas (draft PACFISH criteria) and wild and scenic eligible corridors. Only trees that were killed, or are expected to die as a result of the fires, would be harvested. The proposal includes prescribed burning of about 2006 acres, and excavator piling

on about 113 acres to reduce fuel loads in harvested areas, which would reduce the risk of future large, uncontrollable wildfires. An estimated 2000 acres of proposed salvage units would be planted with conifer seedlings to help meet desired conditions for species diversity. The Forest Service proposal also includes approximately 0.5 miles of temporary road construction, 1.8 miles of permanent road construction, and 2.5 miles of road reconstruction to access the specific harvest units. All temporary roads constructed for this project, as well as an estimated 39 miles of existing non-essential road are proposed for restoration to reduce sediment and water yields, and improve grizzly bear habitat security. Non-essential roads are those that are no longer considered a necessary part of the permanent transportation system. Drainage improvement activities (such as surface ripping, drainage structure improvement, seeding) would be implemented on an additional 4 miles of existing system roads, with the intent of restoring natural drainage and reducing sediment. These roads will be needed for future management access, and would remain a part of the permanent transportation system. Additional road access restrictions may be needed to provide adequate security areas for grizzly bears, however identification of specific road closure proposals is pending further analysis. In addition, projects to improve watershed recovery, reforestation of 475–550 acres of severely burned areas not proposed for salvage, revegetation of road cut and fill slopes, and repair of damaged hiking trails would be accomplished if adequate funds are available.

The decision area includes all or a portion of three roadless areas: the entire Big Creek Roadless Area #701, and portions of the Zulu Roadless Area #166 and Mt. Henry Roadless Area #666. Some timber salvage, fuels reduction activities, and reforestation would occur within the Big Creek Roadless Area; no activities are proposed within the Zulu or Mt. Henry Roadless Areas. No road construction is proposed within any roadless area. No proposed activities are located in areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

Due to the high level of tree mortality in proposed harvest units, most harvested areas would resemble clearcut, seed-tree, or shelterwood silvicultural methods. Only those live trees which must be cut to facilitate logging fire-killed trees would be harvested. In addition to most live trees, 10–15 snags per acre would be retained in all harvested areas if available. Timber harvest would be done by skyline, forwarder or winter tractor, and helicopter, and designated to result in minimal ground disturbance, risk of erosion, and compaction.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area contains nine MA's: 2, 3, 10, 12, 13, 14, 15, 19, and 24. Briefly described, MA 2 is managed to protect and enhance roadless recreation use and provide wildlife values. MA 3 is managed to provide opportunities for dispersed recreation in naturally appearing environments using trails and primitive roads for access. MA 10 is managed to maintain or enhance habitat effectiveness for winter use by big-game animals and protect scenic quality in areas visible from major travel routes. MA 12 is managed to maintain or enhance the summer-range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 13 is managed to provide the special habitat necessary for old growth dependent wildlife. MA 14 focuses on maintaining or enhancing grizzly bear habitat, reducing grizzly/human conflicts, assisting in the recovery of the grizzly bear, realizing a programmed yield of timber production, and providing for the maintenance or enhancement of other wildlife species, especially big game. MA 15 is managed primarily for timber production while providing for other resource values. MA 19 is managed to protect soil stability and water quality by maintaining the vegetation in a healthy condition and minimizing surface disturbance. MA 24 is managed to protect mid to high elevation sites with rocky, thin soils. This MA is also managed for any wildlife resources that may occur. Timber salvage and fuels reduction is proposed in MA 12, MA 14, and MA 24.

*Preliminary Issues*

Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below:

- Water Quality—Streams in the decision area have been impacted by past management and large wildfires. How would the proposed action affect water yield, sediment production, stream stability, and recovery from past impacts?
- Timber Supply—An estimated 92 million board feet of timber was killed in the North Fork Fire complex. Much of this fire-killed timber will quickly lose its commercial value due to rapid deterioration. To what extent does the proposed action recover the commercial value of fire-killed timber to help meet local and national needs?
- Activity in Roadless Areas—What effect would the proposal have on the roadless character of the Big Creek Roadless Area and other roadless areas?
- Grizzly Bear—The decision area lies within the recovery area for the Cabinet/Yaak grizzly bear ecosystem. How would the proposal maintain and enhance grizzly bear habitat, and contribute to recovery efforts?
- Old Growth—An estimated 1500 acres of designated old growth was destroyed by intense, stand replacing wildfire. What options are available to manage for suitable levels of old growth habitat in the decision area?
- Fisheries—Some streams contain fisheries habitat and resident fish populations, including torrent sculpin (a Region 1 sensitive species), possibly bull trout (currently being considered for listing as a threatened or endangered species), and westslope cutthroat trout (likely hybridized). How would the proposed action affect fisheries habitat and populations?
- Future Fire Risk—The wildfires of 1994 killed more trees over a larger area than would be expected in this ecosystem. Over the next 20 years most of these fire killed trees will fall, creating high fuel loadings over an area that is unprecedented in scale. Recurrence of wildfires are anticipated within the next 50 years, and could produce more severe effects to soils, water resources, and vegetation than the 1994 fires. How would the proposed action reduce future fuel loads and the corresponding risk of severe, uncontrollable wildfire?

**Forest Plan Amendment**

The Kootenai National Forest Land and Resource Management Plan has specific management direction for the North Fork decision area. The North Fork proposed action is designed to maintain or improve resource conditions and move towards achieving desired ecological conditions, and is consistent with the goals and objectives of the Forest Plan. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan exceptions or amendments would be addressed in the EIS.

*Decision To Be Made*

The Kootenai National Forest Supervisor will decide the following:

Should dead and imminently dead trees within fire areas be harvested and if so how and where,

What amount, type, and distribution of watershed restoration projects, including road restoration, would be implemented,

What burned areas need to be replanted,

What road access restrictions would be implemented to provide security for grizzly bears, and

If Forest Plan exception or amendments are necessary to proceed with the Proposal Action within the decisions area.

*Public Involvement and Scoping*

Some public participation efforts have already been initiated. On October 1, 1994 a public field trip to the North Fork Decision Area was held to provide interested people with an opportunity to view the fire areas and ask questions of fire managers and resource specialists. On January 10, 1995, an open house and slide presentation was held with 25 individuals attending. Comments were requested during both of these public involvement efforts. An open house will be held from 10:00 a.m. to 7:00 p.m. on February 21, 1995 at the Rexford Ranger District office, 1299 Hwy 93 N, Eureka, MT 59917, to provide an opportunity for the public to review of the proposed action. Consultation with appropriate State and Federal agencies has been initiated. Preliminary effects analysis indicated that the wildfires may significantly affect the quality of the human environment, and fire recovery activities have the potential to both intensify and reduce effects. These potential effects prompted the decision to prepare an EIS for the North Fork Fire Salvage.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring addition alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

**Estimated Dates for Filing**

The draft North Fork Fire Recovery EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April, 1995. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed by August, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

**Reviewer's Obligations**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environment objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

**Responsible Official**

Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 US Highway 2 West, Libby, MT 59923 is the responsible Official. I have delegated the responsibility to prepare the North Fork Fire Salvage Environmental Impact Statement to Robert J. Thompson, District Ranger, Rexford Ranger District. As the Responsible Office I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decisions in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 30, 1995.

**Robert L. Schrenk,**

*Forest Supervisor.*

[FR Doc. 95–3046 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–11–M

## Zaca Mine Project; Toiyabe National Forest, Alpine County, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Department of Agriculture, Forest Service and Alpine County Planning Department will be jointly preparing an Environmental Impact Statement/Report (EIS/EIR) for the proposed development of an open pit/heap leach gold and silver mining project in Alpine County, California. Preparation of the EIS will be assisted by a third party contractor, funded by the proponent, Western States Minerals Corporation (WSM).

**DATES:** Comments concerning the scope of the analysis should be received in writing no later than March 27, 1995.

**ADDRESSES:** Send written comments to: R.M. ''Jim'' Nelson, Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed project and preparation of the EIS to Maureen Joplin, Project Team Leader, Toiyabe National Forest. Telephone: 702–355–5394.

**SUPPLEMENTARY INFORMATION:** Western States Minerals Corporation (WSM) has filed a proposed Plan of Operations (POO) for an open pit/cyanide heap leach gold/silver mine in Alpine County, California. The project is located approximately four miles southeast of Markleeville in sections 29,30,31 and 32, T10N R21E, M.D.M. Total area of proposed disturbance is

228 acres. Forest Service review of the project is required to minimize impacts to natural resources, to develop an approved plan of operations pursuant to regulations at 36 CFR 228, and to coordinate permitting with other state and federal agencies. Alpine County will review the proposal for a Conditional Use Permit consistent with planning and zoning and for consistency with California's Surface Mining and Reclamation Act. Alpine County and Forest Service will act as joint lead agencies for the project review. Scoping of interested agencies began with a meeting on January 24, 1995. Public comments will be requested through notices published in the Reno Gazette-Journal, Douglas County Record-Courier, Alpine Enterprise, Nevada Appeal, and Tahoe Daily Tribune, through direct mailings, and through a public meeting to be held at Turtle Rock Park, Alpine County on February 22, 1995. Copies of the proposed operating plan may be viewed at the Carson and Bridgeport Ranger District offices (Carson City, NV and Bridgeport, CA), and at the Forest Supervisor's office (Sparks, NV). Forest Service and Alpine County evaluated a similar project at the same location in 1982. An environmental assessment/environmental (EA/EIR) impact report was written, and the project approved but never implemented. Copies of the 1982 EA/EIR are available for review at the Forest Supervisor's office, and at the Carson and Bridgeport Ranger Districts. Preliminary issues associated with the project are water quality in Monitor Creek and the East Fork of the Carson River, impacts to wetlands, reclamation of disturbed areas, public safety, and socioeconomic impacts. Alternatives will be formulated which address these and any other issues generated by scoping; the no action alternative will also be analyzed. A draft EIS/EIR is anticipated for release in January of 1996.

Several government agencies will be invited to participate in this project as cooperating or participating agencies. These agencies include, but are not limited to, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, California Regional Water Quality Control Board, California Dept. of Fish and Game and California Dept. of Transportation. Additional federal, state, and local permits and licenses may be required to implement the proposed action. These may include, but are not limited to, a Section 404 permit, Water Pollution Control Permit, Reclamation Permit for Mining Operations, and a General Discharge Permit for Stormwater.

The Forest Service is the lead federal agency for this project and R.M. ''Jim'' Nelson, Forest Supervisor of the Toiyabe National Forest is the responsible official. The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in January of 1996. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be at least 45 days from the date the EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 31, 1995.

**Gary Sayer,**

*Deputy Forest Supervisor, Toiyabe National Forest.*

[FR Doc. 95–3077 Filed 2–7–95; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–805, A–821–806, A–823–806]**

### Notice of Amended Preliminary Determinations of Sales at Less Than Fair Value: Antidumping Duty Investigations of Pure and Alloy Magnesium From the Russian Federation and Pure Magnesium From Ukraine

**AGENCY:** Import Administration, International Trade Administration, Commerce Department.

**EFFECTIVE DATE:** February 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Tomaszewski, Mark Wells, or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone (202) 482–0631, 482–3003 or 482–0922.

**Scopes of Investigations**

These investigations cover pure and alloy primary magnesium. The scopes are fully described in the preliminary determinations (*see Notice of Preliminary Determinations of Sales at Less Than fair Value: Pure and Alloy Magnesium from the Russian Federation* (59 FR 55427, November 7, 1994) and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Pure Magnesium from Ukraine* (59 FR 55420, November 7, 1994)).

**Case History**

On October 27, 1994, the Department of Commerce (''the Department'') made its affirmative preliminary determinations of sales at less than fair value in the above-cited investigations concerning subject merchandise from Russia and Ukraine. The petitioners, on November 14, 1994, alleged that the Department made several ministerial errors in those preliminary determinations and requested that the Department correct these ministerial errors accordingly.

On December 22, 1994, the Department found that the petitioners' allegations relating to the use of the initiation margins, as recalculated by the Department, as best information

available (''BIA'') for non-cooperative respondents and in the weighted-average calculations of the ''all others'' rate, involved calculation errors that were ministerial in nature. However, the Department determined that these errors did not warrant correction since such correction did not result in a combined change of at least 5 absolute percentage points in, and no less than 25 percent of, any of the original preliminary dumping margins—the threshold for amending our preliminary determination.

On January 4, 1995, the petitioners contested the Department's finding, stating that the ministerial errors did, in fact, result in a combined change of at least 5 absolute percentage points in, and no less than 25 percent of, any of the original preliminary dumping margins and, therefore, require correction in amended preliminary determinations. The petitioners are correct.

**Amendment of Preliminary Determinations**

The Department is amending its preliminary determinations. Set forth below is the basis for the amended preliminary determinations concerning the recalculation of the initiation margin as it relates to both the BIA rate for non-cooperative respondents and the ''all others'' rate.

It is not our normal practice to amend preliminary determinations since these determinations only establish estimated margins, which are subject to verification and which may change in the final determination. However, the Department has stated that it will amend a preliminary determination to correct for significant ministerial errors. (*See Amendment to Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan*, 57 FR 33492 (July 29, 1992)).

*Russia*

In the preliminary determinations for both pure and alloy magnesium from Russia, the highest margins for each class or kind (*i.e.*, pure or alloy) of subject merchandise in the petition, as recalculated by the Department at initiation to account for errors in arithmetic and/or methodology, were assigned as BIA for non-cooperative respondents. In turn, the company-specific BIA margins were among the margins used in calculating the ''all others'' rate. Certain factor values, based on prices in the United States, were not included in the recalculation of the petition margin at initiation because (1) petitioners failed to follow the Department's established hierarchy with respect to factor valuation, and (2) petitioners provided no basis for determining that the United States values were representative of the appropriate surrogate country values. Specifically, no value for factory overhead was included in the constructed value calculation on which the initiation margins for pure and alloy magnesium from Russia are based. In addition, values for four inputs, fluorspar, magnesium chloride, sodium chloride, and barium chloride, as well as a value for packing, were not included in the initiation margin calculations. Therefore, the petitioners argued that the Department's recalculations result in the understatement of the margin assigned as BIA to non-cooperative respondents and in the understatement of the margin used in calculating the ''all others'' rate as well.

The Department considers the omission of certain factor values in the recalculated margins from the petition to be ministerial errors. Because correction of this error would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the BIA margins in the preliminary determinations for pure and alloy magnesium from Russia, this error constitutes a significant ministerial error.

The omission of factory overhead has been corrected by applying the Brazilian surrogate percentage value for factory overhead to the petition's total cost of manufacture and the resulting figure was included in the petition's margin calculation. Selling, general and administrative (SG&A) expenses and profit in the petition's margin calculations for pure and alloy magnesium from Russia were also recalculated accordingly to account for factory overhead. In addition, the Brazilian surrogate value for fluorspar as a flux additive was also included in the revised margin assigned as BIA for non-cooperative respondents and used in the calculation of the ''all others'' rate. The petitioners requested that the missing factor values be based on U.S. experience reported in the petition. However, the factor values in the petition were already determined by the Department to be inappropriate. Accordingly, the Department is applying the surrogate values, which more reasonably reflect the value of these factors in the production process.

No values were included for magnesium chloride, barium chloride, or sodium chloride since those factors were never considered in the petition's margin calculations. In addition, packing could not be valued since the petition provided no specific quantity data on the factor for determining an appropriate unit value.

*Ukraine*

In the preliminary determination for pure magnesium from Ukraine, the highest margin in the petition, as recalculated by the Department at initiation to account for errors in arithmetic and/or methodology, was assigned as BIA for non-cooperative respondents. In turn, the company-specific BIA margins were among the margins used in calculating the ''all others'' rate.

Furthermore, in calculating Gerald Metals' margin for pure magnesium from Ukraine, the BIA margin, based on this recalculated initiation margin, was applied to certain U.S. sales transactions of subject merchandise produced by an uncooperative respondent, Zaporozhye.

Certain factor values, based on prices in the United States, were not included in the recalculation of the petition margin at initiation because (1) petitioners failed to follow the Department's established hierarchy with respect to factor valuation, and (2) petitioners provided no basis for determining that the United States values were representative of the appropriate surrogate country values. Specifically, no values for factory overhead and two material inputs used in the production of the subject merchandise were included in the constructed value calculation on which the petition margin for pure magnesium was based. Therefore, petitioners argued, the Department's recalculation of the petition margin resulted in the understatement of the margin assigned as BIA to non-cooperative respondents, in the understatement of the ''all others'' rate, and in the understatement of Gerald Metals' calculated margin.

The Department considers the omission of certain factor values in the recalculated petition margin to be a ministerial error. Because correction of this error would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the BIA margin in the preliminary determination for pure magnesium from Ukraine, this error constitutes a significant ministerial error.

The ministerial error has been corrected by applying the percentage value for factory overhead used in the preliminary determination margin calculations (which was the factory overhead rate from the petition because a surrogate value for factory overhead from either Indonesia or Egypt could not be found) to the petition's total cost of

manufacture and the resulting figure was added to the constructed value in the petition's margin calculation. Selling, general and administrative (SG&A) expenses and profit in the petition's margin calculations for pure magnesium from Ukraine were also recalculated accordingly to account for factory overhead. In addition, the Indonesian surrogate value for one of the missing input values was also figured in the revised margin calculation. The petitioners requested that the missing material values be based on material values originally reported in the petition. However, the petition's unit value for one of the material inputs at issue was already determined by the Department to be inappropriate. Accordingly, the Department determined that the surrogate value for the factor more reasonably reflects the value of the factor in the production process.

The other material input in question could not be valued since the petition provided no specific quantity data or description of the factor for determining an appropriate unit value.

### Addenda to Preliminary Determinations

In our October 27, 1994, preliminary determinations in these proceedings, we stated that we would impose company-specific duty deposit rates on certain non-participating mandatory respondents whose identities were business proprietary and thus could not be disclosed. Subsequent to publication of those determinations, we were informed by the U.S. Customs Service that it could not administer suspension-of-liquidation instructions that involved unidentified companies. Accordingly, we did not assign company-specific deposit rates to these companies; instead, entries of merchandise sold by these companies are subject to the ''All Others'' deposit rate.

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require cash deposit or posting of bond on all entries of subject merchandise from Russia and Ukraine for non-cooperative respondents and for ''all others'' at the newly calculated rates, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension-of-liquidation will remain in effect until further notice. The revised company-specific BIA margins for non-cooperative respondents and the ''all others'' rate as well as Gerald Metals' revised margin for pure magnesium from Ukraine are as follows:

| | Pure magnesium (percent) | Alloy magnesium (percent) |
|---|---|---|
| Russia: | | |
| F&S | 100.25 | 153.65 |
| W&O Bergmann | 100.25 | 153.65 |
| Derek Raphael & Co. | 100.25 | 153.65 |
| Marco Trading | 100.25 | 153.65 |
| Wogen Group | 100.25 | 153.65 |
| Alex | 100.25 | 153.65 |
| ''All others'' | 94.30 | 153.65 |
| Ukraine: | | |
| Gerald Metals | 83.32 | |
| Alusuisse-Lonza | 104.27 | |
| Derek Raphael | 104.27 | |
| Marco Trading | 104.27 | |
| Wogen Group | 104.27 | |
| Alex | 104.27 | |
| Mages | 104.27 | |
| F&S | 104.27 | |
| ''All others'' | 99.81 | |

### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the amended preliminary determinations. If our final determinations are affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the original preliminary determinations (October 27, 1994) or 45 days after our final determinations.

This notice is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 31, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–3133 Filed 2–7–95; 8:45 am]

BILLING CODE 3510–DS-P

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**[A–201–504]**

## Porcelain-on-Steel Cooking Ware From Mexico; Amendment to Final Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of amendment to final results of Antidumping Duty Administrative Review.

**SUMMARY:** We are amending the final results of our administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico, published on January 9, 1995 (60 FR 2378). The amended notice reflects the correction of a ministerial error made in the calculation of cost of production in the final results. We are publishing this amendment in accordance with 19 CFR 353.28(c).

**EFFECTIVE DATE:** February 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Lorenza Olivas or Rick Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

The review covered two exporters, CINSA, S.A., and Acero Porcelanizado, S.A. (APSA), and the period December 1, 1990 through November 30, 1991. The Department of Commerce (the Department) published the preliminary results on February 11, 1994 (59 FR 6616), and the final results on January 9, 1995 (60 FR 2378) of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico (58 FR 43327).

### Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

### Amendment of Final Results

On January 13, 1995, CINSA, S.A., alleged that the Department made a clerical error in calculating the cost of production. CINSA argues that, in accounting for the effects of inflation on depreciation expense, the Department overstated the cost of production by applying an incorrect factor to fixed overhead expense.

Petitioner argues that the Department accurately implemented its intention in calculating the cost of production.

We agree with CINSA. We reviewed our calculation and have determined that the computer instructions applied an incorrect factor to total fixed overhead. Our intent was to account only for the effects of inflation on depreciation expense because all other

fixed overhead costs already reflected inflation. We have, therefore, amended our calculation of fixed overhead by applying a factor to fixed overhead to account only for the effects of inflation on depreciation expense.

**Final Results of Review**

Upon review of comments submitted, the Department has determined the margin for CINSA to be 13.35 percent for the period December 1, 1990 through November 30, 1991. The Customs Service shall assess antidumping duties on all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of review, as provided for by section 751(a)(1) Tariff Act of 1930, as amended (the Act): (1) the cash deposit rate for CINSA will be 13.35 percent as outlined above; (2) the cash deposit rate for APSA will continue to be 4.66 percent, the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV), but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other exporters will be 29.52 percent, the ''all others'' rate established in the LTFV investigation. *See, Floral Trade Council* v. *United States,* Slip Op. 93–79, and *Federal Mogul Corp.* v. *United States,* Slip Op. 93–83.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This notice is in accordance with sections 751(f) of the Act (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: February 2, 1995.

**Susan G. Esserman,**

*Assistant Secretary, for Import Administration.*

[FR Doc. 95–3134 Filed 2–7–95; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Commission on Roles and Missions of the Armed Forces

**AGENCY:** Department of Defense, Commission on Roles and Missions of the Armed Forces.

**ACTION:** Notice.

**SUMMARY:** On January 25, 1995, 60 FR 4892, the Department of Defense published a notice concerning a meeting of the Commission on Roles and Missions of the Armed Forces. The open portion of this meeting, from 12:45 p.m. until 2:15 p.m., was cancelled. All other information remains unchanged.

Extraordinary circumstances compel this amendment to be posted in less than the 15-day requirement.

Dated: February 3, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–3163 Filed 2–7–95; 8:45 am]

BILLING CODE 5000–4–M

### Strategic Environmental Research and Development Program, Scientific Advisory Board

**ACTION:** Notice

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

*Date of Meeting:* March 7–9, 1995 from 0830 to approximately 1630.

*Place:* U.S. Army Corps of Engineers, Waterways Experiment Station, Vicksburg, MS.

*Matters to be Considered:* Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

*For Further Information Contact:* Ms. Amy Levine, 901 North Street, Suite 303, Arlington, VA, 22203, (703) 696–2124.

Dated: February 2, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–3027 Filed 2–7–95; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Section 204 Habitat Restoration Project at Poplar Island in Talbot County, MD

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** The Baltimore District U.S. Army Corps of Engineers is investigating the use of dredged material to restore Poplar Island. The project would restore Poplar Island to its approximate size in 1857, thereby adding approximately 1,000 acres of wildlife habitat in the Upper Chesapeake Bay. The project would use approximately 10 to 40 million cubic yards of clean material, dredged primarily from the southern approach channels to Baltimore Harbor. The amount of material placed at the site would depend on the final design, including the island size and shape, and the relative proportions of upland and wetland habitat constructed on the island. Dredged material would be placed behind dikes at the site, then shaped and planted to create both intertidal wetland and upland wildlife habitat. The feasibility study is being conducted under the authority of Section 204 of the Water Resources Development Act of 1992. The potential non-Federal sponsor for the project is the Maryland Port Administration (MPA), a part of the Maryland Department of Transportation.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be addressed to Ms. Stacey Brown, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–PC, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–3639.

**SUPPLEMENTARY INFORMATION:**

1. The project will be constructed under Section 204 of the Water Resources Development Act of 1992, which allows Federal funding for the protection, restoration, and creation of aquatic and ecologically related

habitats, including wetlands, in connection with dredging for construction, operation, or maintenance of an authorized Federal navigation project.

2. Poplar Island is located on the Eastern Shore of the upper Chesapeake Bay, about one mile northwest of Tilghman Island, in Talbot County, Maryland. The present complex consists of four small remnant islands with a combined area of approximately 5 acres. The island has steadily eroded over time; in 1857 the island covered an area of approximately 1,000 acres; the remaining small islands are in danger of completely eroding within the next few years.

3. The project would restore Poplar Island to the approximate size and footprint of the island in 1857. The proposed project actions include the placement of approximately 10 to 40 million cubic yards of clean dredged material behind dikes at the site. The amount of material to be placed would depend partly on the relative proportions of upland and wetland habitat created. The material would be primarily dredged during maintenance of the southern approach channels to Baltimore Harbor. After placement, the material would be shaped and planted to create both intertidal wetland and upland wildlife habitat. Poplar Island has been identified by the U.S. Fish and Wildlife Service, the Maryland Department of Natural Resources, and other natural Resources management agencies as a valuable nesting and nursery area for many species of wildlife, including bald eagles, osprey, heron, and egret.

4. Expected project benefits include the creation of wetland and upland wildlife habitat, stabilization of the rapidly eroding island remnants, and beneficial use of dredged material from Federal navigation channel maintenance activities. A project pre-feasibility report (similar to a Corps of Enegineers Reconnaissance report) was completed by the Maryland Port Administration (MPA) in 1993.

5. Various alternative designs and projects size will be considered including the ''no action'' alternative. Alternatives to be considered will include variations such as the size and location of the placement area; dike configuration and construction materials; site capacity; and the relative proportions and locations on the island of wetland and upland habitat.

6. The Baltimore District is preparing a DEIS which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS will also apply guidances issued by the Environmental Protection Agency, under authority of Section 404 of the Clean Water Act of 1977 (Pub. L. 95–217). Potential effects of the project on water quality, fish and wildlife resources, recreation, aesthetics, cultural, and other resources will be investigated.

7. The public involvement program will include meetings and coordination with interested private individuals and organizations, as well as concerned Federal, state, and local agencies. A public notice requesting comments on the proposed project amd a coordination letter have been sent to appropriate agencies, organizations, and individuals. Additional public information will be provided through printed media, mailings, and radio or television announcements. Two scoping meetings, identical in format, will be held at 7:00 p.m. on 21 February 1995 at Tilghman Elementary School, Tilghman, Maryland, and on 23 February 1995, at Beach Elementary School, in Chesapeake Beach, Maryland. Two meetings will be held to provide equal opportunities for residents on both the Eastern Shore and the west side of the Chesapeake Bay to take part in the public involvement program.

8. In addition to the Corps and the Maryland Port Administration, current participants in the DEIS process include, but are not limited to, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of Natural Resources, Maryland Department of the Environment, and the Maryland Port Administration. The Baltimore District invites potentially affected Federal, state and local agencies, and other interested organizations and parties to participate in this study.

**AVAILABILITY:** The DEIS is tentatively scheduled to be available for public review in September of 1995.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 95–3082 Filed 2–7–95; 8:45 am]

BILLING CODE 3719–41–M

## U.S. Marine Corps

## Privacy Act of 1974; Amend Record Systems

**AGENCY:** Marine Corps, Department of the Navy.

**ACTION:** Amend record system.

**SUMMARY:** The U.S. Marine Corps proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. During a recent review, the notice for MJA00009, entitled Marine Corps Command Legal Files, was found to be incorrectly republished in the **Federal Register** on February 22, 1993, at 58 FR 10658. This amendment will correct the notice.

**DATES:** The amendment will be effective on February 8, 1995.

**ADDRESSES:** Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

**SUPPLEMENTARY INFORMATION:** The U.S. Marine Corps record system notices for records systems 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 specific changes to the system of records are set forth below followed by the system of records notice published in its entirety, as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 1, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**MJA00009**

**SYSTEM NAME:**

Marine Corps Command Legal Files *(February 22, 1993, 58 FR 10658).*

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete the last paragraph.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Records of disciplinary proceedings, including courts-martial records and records of nonjudicial punishments with supporting documents, military justice management information pre-post trial (e.g., courts-martial docketing logs, reports of cases tried, etc.), pre-disciplinary inquires and investigations and documentation pertaining to post-hearing/trial review, clemency action, appellate leave or other personnel action related to or resulting from courts-martial, JAG Manual investigations pertaining to claims, line of duty misconduct determinations, command irregularities, and unusual

incidents or accidents with supporting documentation and post-investigation review and actions. Inquiries made into incidents or situations which result in disbarment of an individual or from entry upon a military installation, referral to base traffic court or civilian, federal, state or local judicial or law enforcement authorities. Recommendations for administrative discharge with supporting documentation, including records of any hearing held and any review or other action taken with respect to the discharge recommendations.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '5 U.S.C. 301; 10 U.S.C. 801, et. seq; 18 U.S.C. 382; and E.O. 9397.'

**PURPOSE(S):**

Delete entry and replace with 'To provide a record of actions for use by commanding officers or officers in charge who have authority to convene a special courts-martial. The records are used as required to initiate, refer or complete appropriate disciplinary proceedings.'

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete last paragraph.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with 'Paper records in file folders.'

**RETRIEVABILITY:**

Delete entry and replace with 'Retrieved by name or service member involved or chronologically with cross-reference to individual involved.'

**SAFEGUARDS:**

Delete entry and replace with 'Records are kept in either locked cabinets or guarded or locked buildings.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Two years or as provided in the Manual of the Judge Advocate General (JAG Instruction 5800.7).'

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commanding Officer of the unit concerned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, or information may be obtained from the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.'

**NOTIFICATION PROCEDURE:**

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the unit concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices, or write to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests for information should contain the full name, Social Security Number, and military status.

For personal visits, the individual should be able to provide a military identification card, a DD Form 214, or a driver's license.'

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with 'Individuals seeking access to information about themselves that may be contained in this system should address written inquiries to the Commanding Officer of the unit concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices, or write to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests for information should contain the full name, Social Security Number, and military status.

For personal visits, the individual should be able to provide a military identification card, a DD Form 214, or a driver's license.'

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with 'The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.'

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'Individual concerned, witnesses to the incident in question or parties concerned therewith, officer investigating the incident, documents or items of real evidence, documents pertaining to the review, action or authorities charged with making a review or taking action.'

* * * * *

**MFD00009**

**SYSTEM NAME:**

Marine Corps Command Legal Files.

**SYSTEM LOCATION:**

All Marine Corps commands whhose commander or officer in charge has the authority to convene a specialsourts-martial. See 10 U.S.C. 826 and the U.S. Marine Corps official mailing addresses which are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian employees of the Department of Defense or guests who have visited Marine Corps installations who have allegedly committed criminal offenses aboard a military installation or whose conduct has been subject to investigation.

Any Marine or Navy service member who is the subject of the disciplinary action under the provisions of the Uniform Code of Military Justice (10 U.S.C. 801) who has been the subject of administrative discharge action pursuant to the provisions of Marine Corps Order P1900.16); or who has been the subject of an investigation (JAG Manual investigations) convened pursuant to the provisions of the Uniform Code of Military Justice or the Manual of the Judge Advocate General (JAG Instruction 5800.7) or any other type of investigation or inquiry.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of disciplinary proceedings, including courts-martial records and records of nonjudicial punishments with supporting documents, military justice management information pre-post trial (e.g., courts-martial docketing logs, reports of cases tried, etc.), pre-disciplinary inquires and investigations and documentation pertaining to post-hearing/trial review, clemency action, appellate leave or other personnel action related to or resulting from courts-martial, JAG Manual investigations pertaining to claims, line of duty misconduct determinations, command irregularities, and unusual incidents or accidents with supporting documentation and post-investigation review and actions. Inquiries made into incidents or situations which result in disbarment of an individual or from entry upon a military installation, referral to base traffic court or civilian,

federal, state or local judicial or law enforcement authorities. Recommendations for administrative discharge with supporting documentation, including records of any hearing held and any review or other action taken with respect to the discharge recommendations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 10 U.S.C. 801, et. seq; 18 U.S.C. 382; and E.O. 9397.

**PURPOSE(S):**

To provide a record of actions for use by commanding officers or officers in charge who have authority to convene a special courts-martial. The records are used as required to initiate, refer or complete appropriate disciplinary proceedings.

**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 the Marine Corp'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.

**RETRIEVABILITY:**

Retrieved by name or service member involved or chronologically with cross-reference to individual involved.

**SAFEGUARDS:**

Records are kept in either locked cabinets or guarded or locked buildings.

**RETENTION AND DISPOSAL:**

Two years or as provided in the Manual of the Judge Advocate General (JAG Instruction 5800.7).

**SYSTEM MANAGER(S) AND ADDRESS:**

Commanding Officer of the unit concerned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, or information may be obtained from the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the unit concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices, or write to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests for information should contain the full name, Social Security Number, and military status.

For personal visits, the individual should be able to provide a military identification card, a DD Form 214, or a driver's license.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves that may be contained in this system should address written inquiries to the Commanding Officer of the unit concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices, or write to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests for information should contain the full name, Social Security Number, and military status.

For personal visits, the individual should be able to provide a military identification card, a DD Form 214, or a driver's license.

**CONTESTING RECORD PROCEDURES:**

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual concerned, witnesses to the incident in question or parties concerned therewith, officer investigating the incident, documents or items of real evidence, documents pertaining to the review, action or authorities charged with making a review or taking action.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 95–3026 Filed 2–7–95; 8:45 am]

BILLING CODE 5000–04–F

## DEPARTMENT OF EDUCATION

### National Committee on Foreign Medical Education and Accreditation

*Date and Time:* Thursday, February 16, 1995, 9:00 a.m. until 5:30 p.m. Friday, February 17, 1995, 9:00 a.m. until noon.

*Place:* Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

*Status:* Parts of this meeting will be open to the public. Parts of this meeting will be closed to the public.

*Matters to be Considered:* The standards of accreditation applied to medical schools by a number of foreign countries and the comparability of those standards to standards of accreditation applied to United States medical schools.

Discussions of the standards of accreditation will be held in sessions open to the public. Discussions directly bearing upon the determinations of comparability will be held in closed sessions.

Discussions of determinations of comparability must be closed to the public because premature disclosure of any determination might significantly frustrate the implementation of a proposed Department action.

**SUPPLEMENTARY INFORMATION:** The National Committee on Foreign Medical Education and Accreditation is established under section 481 of the Higher Education Act, as amended (20 U.S.C. 1088). This Committee is not an advisory committee under the Federal Advisory Committee Act but rather carries out operational activities of the U.S. Department of Education.

**FOR FURTHER INFORMATION CONTACT:** Carol F. Sperry, Executive Director, National Committee on Foreign Medical Education and Accreditation, 600 Independence Avenue, SW., Room 3905, ROB #3, Washington, DC 20202–7563. Telephone: (202) 260–3636. Beginning Monday, February 13, 1995, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 95–3033 Filed 2–7–95; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Financial Assistance, the American Institute of Architects

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of intent to award a grant based upon an unsolicited application.

**SUMMARY:** The Department of Energy (DOE), Golden Field Office, through the Chicago Regional Support Office, announces, pursuant to DOE Financial Assistance Rules, 10 CFR 600.14(f), its intent to award a grant to The American Institute of Architects (AIA) to coordinate technical assistance and promote the use of energy efficient and renewable energy technologies by the village of Pattonsburg, Missouri, a community that is rebuilding itself after the Midwest floods of 1993.

**SUPPLEMENTARY INFORMATION:**

On June 3, 1994, AIA submitted a proposal to assist the village of Valmeyer, Illinois, which, like Pattonsburg, is attempting to rebuild after the 1993 floods. DOE accepted this proposal and awarded AIA a grant in the amount of $100,000. Subsequently, AIA, DOE and the Federal Emergency Management Agency (FEMA) jointly agreed to provide similar assistance to Pattonsburg. $50,000 in DOE funding was provided on September 30, 1994. DOE and FEMA have entered into an Interagency Agreement through which FEMA is providing $50,000 to support of the project. Given the existence of the DOE grant, FEMA and DOE have jointly agreed that DOE will award and administer the FEMA funds.

The unsolicited application for support of this activity has been accepted by DOE and FEMA as a result of their joint determination that the proposed activity is meritorious, likely to be effective and successful, and offers a unique opportunity to mitigate the damage from future flood episodes (FEMA), while advancing the DOE mission of developing and demonstrating the use of energy efficient and renewable energy technologies in a practical and highly visible setting. The project period for the award began on July 20, 1994, and is scheduled to end on June 30, 1995. DOE/FEMA plan to provide funding in the amount of $50,000. This award will not be made for at least 14 days to allow for public comment.

**FOR FURTHER INFORMATION CONTACT:**

William Becker, U.S. Department of Energy, Office of the Assistant Secretary, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585

Doris A. Freeman, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Room 1411, Kansas City, MO 64106.

Issued in Golden Colorado on January 24, 1995.

**Matthew A. Barron,**

*Contracting Officer.*

[FR Doc. 95–3135 Filed 2–7–95; 8:45 am]

BILLING CODE 6450–10–M

## Denver Support Office; Notice of Solicitation for Financial Assistance Applications; Indian Energy Resource Development Program

**AGENCY:** Department of Energy.

**ACTION:** Notice of solicitation for financial assistance for development of Indian Energy Resources.

**SUMMARY:** The Office of Technical and Financial Assistance, Energy Efficiency and Renewable Energy, through the Denver Regional Support Office, announces its intention to issue a competitive solicitation and make financial assistance awards to support Indian renewable energy and energy efficiency resource activities as authorized by section 2606 of Title XXVI, Public Law 102–486, the Energy Policy Act of 1992. This action is subject to the DOE Financial Assistance Rules, which can be found in title 10 of the Code of Federal Regulations (10 CFR part 600).

**ADDRESSES:** To obtain a copy of the solicitation write to the U.S. Department of Energy, Denver Support Office, 2801 Youngfield St., Suite 380, Golden, CO 80401–2266. Attn: Margaret Learmouth, FY95 Indian Energy Solicitation. (Applications Number DE-PS48–95R810529) For convenience, requests for the solicitation may be faxed to Ms. Learmouth at (303) 231–5757 or you may call the solicitation hotline at (303) 231–5750, ext. 132.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, seeks to assist Tribes in the development of renewable energy and energy efficiency projects on Indian Reservations. Section 2606 authorizes support of projects for renewable energy and energy efficiency such as (1) technical assistance, (2) resource assessment, (3) feasibility analysis, (4) technology transfer, and (5) resolution of other technical, financial, or management issues identified by applicants. Demonstration projects which are an integral part of a feasibility study are allowable, whereas construction project implementation will not be considered. An applicant for assistance must be a Federally recognized Indian tribe, including an Alaska Native village or corporation (as defined in, or established under, the Alaska Native Claims Settlement Act).

Renewable energy technologies of interest, include but are not limited to: bio-mass or bio-energy; photovoltaic; wind turbine; hydropower or ocean power; solar thermal; heat pump; and geothermal technologies. Energy efficiency projects include, but are not limited to: lighting equipment systems; heating and air conditioning equipment; electric motors, various energy conservation techniques and measures; utility electric supply strategies; building efficiency; automated/computerized energy management systems; and co-generation techniques.

More details on the types of renewable energy and energy efficiency projects and activities that might be expected as a result of this competition are included in the solicitation.

An applicant is advised to concentrate only on its strongest, most promising, and best developed energy resource project. The DOE discourages multiple applications from the same tribal entity.

With the exception of awards for the purpose of feasibility studies, at least 20 percent of the cost of any project is to be provided from non-Federal sources.

Applicants must show evidence of tribal involvement in the proposed energy project. Most commonly this will be shown by including in the application a tribal resolution, or similarly official tribal document, which reflects the tribe's support for and understanding of the project for which funding is applied.

It is currently anticipated that the review of applications will begin on or about May 15, 1995. Selections will commence approximately mid-June, with anticipated award issuance during the period July through September 1995.

It is anticipated that the DOE will make multiple financial assistance awards as a result of this solicitation. In fiscal year 1995, approximately $2,000,000 will be made available to the program. Approximately 12–15 awards may be made in fiscal year 1995 with the federal share funding levels not to exceed $200,000 per award. The number of awards depends on the availability of funds, needs of projects that are continuing from prior years, DOE program policy considerations, and the technical quality of the applications.

Project periods will generally not exceed one year in length. All DOE funding is subject to the availability of appropriations.

Awards may be either grants or cooperative agreements, depending on whether substantial involvement is anticipated between DOE and the recipient during performance of the contemplated activity.

The solicitation will be issued on or about February 6, 1995, and will contain detailed information on funding, cost sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due approximately 90 days after solicitation release (see the solicitation instructions for the exact date and time for application submission).

Issued in Golden, Colorado, on January 26, 1995.

**Margaret M. Learmouth,**

*Contracting Officer, Golden Field Office.*

[FR Doc. 95–3136 Filed 2–7–95; 8:45 am]

BILLING CODE 6450–01–P

## Environmental Management Site Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Subcommittee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Environmental Remediation Program Subcommittee, Savannah River Site.

**DATES AND TIMES:** Thursday, February 9, 1995 3:30 p.m.–6 p.m.

**ADDRESSES:** Triangle Plaza, 203 Edgefield Road, North Augusta, South Carolina.

**FOR FURTHER INFORMATION CONTACT:** Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

Thursday, February 9, 1995

3:30 p.m.—Discuss path forward
4:00 p.m.—Briefings on Environmental Remediation Issues
6:00 p.m.—Adjourn

*Public Participation:* The meetings are open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, this notice is being published less than 15 days before the date of the meeting.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC on February 3, 1995.

**Gail Cephas,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 95–3137 Filed 2–7–95; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. ER94–961–000, et al.]**

## Electric Rate and Corporate Regulation Filings; Florida Power Corp., et al.

February 1, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Florida Power Corp.

[Docket No. ER94–961–000]

Take notice that on January 23, 1995, Florida Power Corporation tendered for filing a Supplement to the Pre-Filing Settlement Agreement in this docket and changes to the rate schedules. The Supplement and the rate schedules amend the Pre-Filing Agreement to eliminate the language permitting the imputation of fossil fuel costs of purchases from qualifying facilities in determining such costs under the fuel adjustment clause.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. Mid-Continent Area Power Pool

[Docket No. ER94–1529–002]

Take notice that on January 17, 1995, Mid Continent Area Power Pool (MAPP), tendered for filing a compliance filing in the above referenced docket.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 3. Union Electric Co.

[Docket No. ER95–280–000]

Take notice that on January 9, 1995, Union Electric Company (UE), tendered for filing an amendment to the Seventh Amendment and related Service Schedule K, to the Interchange Agreement dated June 28, 1978, between Associated Electric Cooperative, Incorporated and UE. The amendment provides the signed agreement to the Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 4. Southern Indiana Gas and Electric Co.

[Docket No. ER95–283–000]

Take notice that on January 25, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing revisions to a proposed Interconnection Agreement with Wabash Valley Power Association, Inc. (WVPA).

The proposed revised Interconnection Agreement will provide for the purchase, sale, and transmission of capacity and energy by either party under the following Service Schedules: (a) Seasonal Power, (b) Wheeling Service, (c) Short-Term Power, (d) Emergency Energy, and (e) Interchange Energy.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of December 15, 1994.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 5. Arizona Public Service Co.

[Docket No. ER95–343–000]

Take notice that on January 25, 1995, Arizona Public Service Company tendered for filing an amendment to its filing in this docket.

Copies of this filing have been served upon the proposed purchasers and the Arizona Corporation Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 6. Stand Energy Corp.

[Docket No. ER95–362–000]

Take notice that on January 27, 1995, Stand Energy Corporation tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. San Diego Gas & Electric Co.**

[Docket No. ER95–416–000]

Take notice that on January 26, 1995, San Diego Gas & Electric Company (SDG&E), tendered a Certificate of Concurrence (COC) dated January 24, 1995 as an Amendment to the Interchange Agreement dated December 20, 1994 (the Agreement) between SDG&E and Associated Power Services, Inc. (APSI). The Agreement established the terms for the sale, purchases or exchange of capacity and energy between SDG&E and APSI.

The COC is being filed by APSI with respect to exchanges of energy or capacity as established under the Agreement.

The Parties requests waiver of the Commission's regulations regarding filing so as to permit this Agreement to become effective on the 15th day of March, 1995.

Copies of this filing have been served upon all parties affected by this proceeding.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Florida Power Corp.**

[Docket No. ER95–457–000]

Take notice that on January 20, 1995, Florida Power Corporation (the Company), tendered for filing a wholesale rate increase to Reedy Creek Improvement District in the amount of $921,000 on a 1995 test year basis. The company proposes that the increased rates become effective, in order of preference, January 1, 1995, or February 5, 1995, or March 21, 1995, according to determinations made in the Commission's acceptance order. The Company states that it has served copies of its filing on the affected customer and the Florida Public Service Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Wisconsin Electric Power Co.**

[Docket No. ER95–463–000]

Take notice that on January 23, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Carolina Power and Light Company (CP&L). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CP&L, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**10. Wisconsin Electric Power Co.**

[Docket No. ER95–464–000]

Take notice that on January 23, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Interstate Power Company (Interstate). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Interstate, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. Wisconsin Electric Power Co.**

[Docket No. ER95–465–000]

Take notice that on January 23, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and InterCoast Power Marketing Company (InterCoast). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on InterCoast, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**12. Florida Power Corp.**

[Docket No. ER95–469–000]

Take notice that on January 23, 1995, Florida Power Corporation (''the Company''), tendered for filing a wholesale rate change in its full requirements, partial requirements and transmission rates.

The rates filed reflect a pre-filing settlement agreement between the Company and its municipal customers who elected to participate in prefiling settlement discussions (Florida Cities) and Seminole Electric Cooperative, Inc. The settlement rates will be extended to customers who elected not to participate in the pre-filing settlement discussions. Under the pre-filing settlement agreement, the rates for all classes of service (except rates for T–1 transmission service, which remained unchanged) will increase on January 1, 1995 in the amount, on a 1995 test year basis, of (1) $3.5 million to the Florida Cities and other customers in the same class that elected not to participate in the settlement discussions and (2) $5.1 million to Seminole Electric Cooperative, Inc.

The Company requests the Commission waive the 60-day minimum notice requirement of the Federal Power Act to achieve the January 1, 1995 effective date for the rate changes proposed for that date for (1) the parties to the pre-filing settlement agreement, (2) customers not parties to the pre-filing settlement agreement but consenting to the pre-filing settlement procedures and (3) any other customers who do not oppose the January 1, 1995 effective date. The Company further requests that the rate increases proposed for January 1, 1995 be permitted to become effective without suspension or, if suspended, that the suspension be for the minimum one day period. The Company additionally requests that the Commission establish an effective date of March 24, 1995, sixty days from the date of the filing, for any customers not bound by the pre-filing settlement agreement who oppose the January 1, 1995 effective date. The Company lastly requests that the rate increases be permitted to become effective without suspension, or, if suspended, that the suspension be for the minimum one day period.

The Company states that it has served copies of its filing on the affected customers and the Florida Public Service Commission

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. New England Power Co.**

[Docket No. ER95–470–000]

Take notice that on January 24, 1995, New England Power Company, tendered for filing a revised Service Agreement between New England Power Company and Hull Municipal Lighting Plant for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. Proven Alternatives, Inc.**

[Docket No. ER95–473–000]

Take notice that on January 25, 1995, Proven Alternatives, Inc. (PAI), tendered for filing pursuant to 18 CFR 35.12, an application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1.

PAI intends to engage in electric power and energy transactions as a

marketer and a broker. In transactions where PAI purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, PAI will be functioning as a marketer. In PAI's marketing transactions, PAI proposes to charge rates mutually agreed upon by the Parties. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where PAI does not take title to the electric power and/or energy, PAI will be limited to the role of a broker and charge a fee for its services. PAI is not in the business of producing or transmitting electric power. PAI does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed upon prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. Arizona Public Service Co.**

[Docket No. ER95–474–000]

Take notice that on January 25, 1995, Arizona Public Service Company (APS), tendered for filing Service Agreement under APS-FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity: Citizens Utilities Company

A copy of this filing has been served on the above listed entity and the Arizona Corporation Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. UGI Utilities, Inc.**

[Docket No. ER95–475–000]

Take notice that on January 25, 1995, UGI Utilities, Inc. (UGI), tendered for filing as a rate schedule an agreement which requires Pennsylvania Power & Light Company (PP&L), to reimburse the actual costs of constructing facilities at UGI's Mountain Substation and changes the point of interconnection between the two parties from the existing Montour-Mountain point of interconnection to the proposed Mountain-Susquehanna T–10 interconnection point. The estimated costs of construction is currently $38,000. UGI proposes that the Agreement become effective as a rate schedule on April 1, 1995. UGI states that the filing has been served upon PP&L and the Pennsylvania Public Utility Commission.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**17. Consolidated Edison Company of New York, Inc.**

[Docket No. ER95–476–000]

Take Notice that on January 26, 1995, Consolidated Edison Company of New York, Inc. (''Con Edison''), tendered for filing an agreement with Catex Vitol Electric, Inc. (''Catex'') to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. For energy and capacity sold by Catex the rates will be market based.

Con Edison states that a copy of this filing has been served by overnight delivery upon Catex.

*Comment date:* February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**18. RIG Gas, Inc.**

[Docket No. ER95–480–000]

Take notice that on January 26, 1995, Rig Gas Inc. (Rig) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the earlier of the date of a Commission order allowing it to become effective on March 27, 1995.

Rig intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Rig sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rig is not in the business of generating, transmitting, or distributing electric power. Rig is not owned by or affiliated with any entity in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliate.

Comment date: February 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**19. Zond-PanAero Windsystem Partners I; Zond-PanAero Windsystem Partners II)**

[Docket Nos. QF84–422–001 and QF85–263–001]

On December 30, 1994, Zond-PanAero Windsystem Partners I and Zond-PanAero Windsystem Partners II (Applicants), c/o Zond Windsystems Management Corporation, of 13000 Jameson Road, Tehachapi, California 93561 submitted for filing two applications to request that a proposed alteration or modification will not result in revocation of qualifying status. No determination has been made that the submittals constitute a complete filing.

According to the Applicants, the small power production facilities (Facility I and Facility II) are located in Riverside County, California, and each consists of wind-powered generator sets. The maximum net electric power production capacity of the facilities are 19.5 MW and 10.4 MW, respectively. Under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, as amended (Incentives Act), Eligible Facilities are entitled to the regulatory exemptions afforded in Sections 292.601 and 292.602 of the Commission's Regulations (principally exemptions to the Federal Power Act and the Public Utility Holding Company Act). Applicants state that Facility I and Facility II are Eligible Facilities under the Incentives Act. Applicants further state that Zond Development Corporation (Zond) or one of its affiliates or subsidiaries may acquire Facility I and Facility II in addition to two other wind-powered small power production facilities with a maximum combined net capacity of 18.7 MW. Applicants state that after the acquisition of all four facilities by Zond, the combined capacity of the small power production facilities using the same primary energy source, located within one mile, and owned by Zond could possibly exceed the 30 MW limit contained in Sections 292.601 and 292.602 of the Commissions' Regulations. Applicants request the Commission to determine whether the regulatory exemptions would continue to apply after the acquisitions.

*Comment date:* Thirty days after the date of publication of this notice in the **Federal Register**, 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, N.E., Washington, D.C. 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 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. 95–3059 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. ER94–175–000, et al.]**

## Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 31, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Consolidated Edison Co. of New York, Inc.

[Docket No. ER94–175–000]

Take notice that on January 20, 1995, Consolidated Edison Company of New York, Inc. (''Con Edison''), tendered for filing an amendment to its agreement with Long Island Lighting Company (''LILCO'') to provide for the purchase and sale of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the Seller's Incremental Cost (''SIC'') plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. The ceiling rate for capacity sold by LILCO is $7.44 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

*Comment date:* February 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. Rainbow Energy Marketing Corp.

[Docket No. ER94–1061–003]

Take notice that on January 20, 1995, Rainbow Energy Marketing Corporation (REMC), tendered for filing a summary of activity for REMC for the quarter ending December 31, 1994.

*Comment date:* February 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 3. PacifiCorp

[Docket No. ER94–1288–002]

Take notice that on January 25, 1995, PacifiCorp tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* February 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 4. Duke Power Co.

[Docket No. ER95–171–000]

Take notice that on January 23, 1995, Duke Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER95–258–000]

Take notice that on January 25, 1995, Consolidated Edison Company of New York, Inc. tendered for filing a Certificate of Concurrence executed by Orange and Rockland Utilities.

*Comment date:* February 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 6. Peak Energy, Inc.

[Docket No. ER95–379–000]

Take notice that on January 24, 1995, Peak Energy, Inc. tendered for filing an amendment to its January 3, 1995, filing in the above-referenced docket.

*Comment date:* February 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 7. Clifford L. Greenwalt

[Docket No. ID–1927–001]

Take notice that on December 30, 1995, Clifford L. Greenwalt (Applicant), tendered for filing an application under Section 305(b) to hold the following interlocking positions:

Director—Central Illinois Public Service Company
Director—First of America Bank Corporation
Director—First of America Bank—Springfield, N.A.

*Comment date:* February 14, 1995, 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, N.E., Washington, D.C. 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 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. 95–3060 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. ER95–452–000, et al.]**

## Electric Rate and Corporate Regulation Filings; New England Power Company, et al.

January 30, 1995.

Take notice that the following filings have been made with the Commission:

### 1. New England Power Co.

[Docket No. ER95–452–000]

Take notice that on January 19, 1995, New England Power Company (NEP), tendered for filing a transmission contract for service to Catex Vitol Electric, Inc.

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. Commonwealth Electric Co.; Cambridge Electric Light Co.

[Docket No. ER95–453–000]

Take notice that on January 19, 1995, in accordance with § 205 of the Federal Power Act, Commonwealth Electric Company and Cambridge Electric Light Company (the companies), each filed a Power Sale and Exchange Tariff FERC Electric Tariff, Original Volume 1. Pursuant to their respective tariffs, the Companies may enter into energy and/or capacity sales and/or exchange transactions when doing so results in an economic benefit to the respective Company and the Buyer (as defined therein).

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 3. Florida Power & Light Co.

[Docket No. ER95–454–000]

Take notice that on January 19, 1995, Florida Power & Light Company (FPL),

filed the Contract for Purchases and Sales of Power and Energy Between FPL and South Carolina Electric & Gas Company. FPL requests an effective date of April 1, 1995.

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**4. New England Power Co.**

[Docket No. ER95–455–000]

Take notice that on January 20, 1995, New England Power Company (NEP), tendered for filing a Service Agreement with Consolidated Edison of New York, Inc. under NEP's FERC Electric Tariff, Original Volume No. 5.

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. American Electric Power Service Corp.**

[Docket No. ER95–459–000]

Take notice that on January 20, 1995, the American Electric Power Service Corporation (AEPSC), tendered for filing, as initial Rate Schedule, Agreement dated January 1, 1995, between AEPSC, an agent for the AEP System Operating Companies and LG&E Power Marketing (LG&E).

The Agreement provides the Marketer access to the AEP System for short-term transmission service. The parties request an effective date of January 21, 1995.

A copy of this filing was served upon the affected state regulatory commissions of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, Tennessee, and the Marketer.

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Public Service Company of Oklahoma; Southwestern Electric Power Co.**

[Docket No. ER95–460–000]

Take notice that on January 20, 1995, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively the Companies), tendered for filing an executed coordination transmission service agreement between Companies and the Oklahoma Municipal Power Authority (OMPA) and a revised index of purchasers to whom Companies provide service under their Coordination Transmission Service Tariff. The Companies request that the filing be accepted to become effective as of January 1, 1995.

A copy of the filing has been sent to the OMPA and the Oklahoma Corporation Commission.

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company.**

[Docket No. ER95–461–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Enron Power Marketing, Inc. (Enron). This Service Agreement specifies that Enron has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and Enron to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 20, 1994, for the Service Agreement.

*Comment date:* February 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Colmac Energy, Inc.**

[Docket No. QF86–856–001]

On January 25, 1995, Colmac Energy, Inc. (Colmac), tendered for filing a supplement to its filing in this docket.

This supplement pertains to technical and power sale aspects of the facility. No determination has been made that this submittal constitutes a complete filing.

*Comment date:* February 15, 1995, 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, N.E., Washington, D.C. 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 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. 95–3061 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Project Nos. 2572 and 2458]**

## Great Northern Paper, Inc.; Notice Extending the Time To Comment on Draft EIS

February 2, 1995.

The Federal Energy Regulatory Commission (Commission) issued a Draft Environmental Impact Statement (DEIS) for 2 projects on the Penobscot River Basin, Maine. The Notice of Availability of the DEIS appeared in the **Federal Register** on December 9, 1994, 59 FR 63791.

In response to letters filed by the Penobscot Indian Nation on January 18, 1995, and by Great Northern Paper, Inc., on January 30, 1995, the Commission is extending the comment period on the DEIS from February 8, 1995, until February 22, 1995.

Anyone wishing to comment in writing on the DEIS must do so no later than February 22, 1995. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Written correspondence should clearly show the following caption on the first page: Penobscot River Basin Docket Nos. 2572 and 2458.

For further information, please contact Edward R. Meyer at (202) 208–7998.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–3063 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket Nos. RP95–68–002, RP94–379–002, and RP94–223–005]**

## Colorado Interstate Gas Co.; Notice of Compliance Filing

February 2, 1995.

Take notice that on February 30, 1995, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1,

Substitute Fourth Revised Sheet No. 11, Substitute Eighth Revised Sheet No. 11 and Substitute Ninth Revised Sheet No. 11.

CIG states that the filing was made pursuant to the Commission's order dated December 30, 1994, in Docket Nos. RP95–68–000, RP94–379, and RP94–223 (not consolidated), which directed CIG to file revised tariff sheets to modify its Account No. 858 stranded costs surcharge to reflect the Commission's discount policy for Order No. 636 transition cost surcharges enunciated in its order dated October 7, 1994 (69 FERC 61,029).

CIG states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–3066 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM95–4–25–001]**

## Mississippi River Transmission Corp.; Notice of Compliance Filling

February 2, 1995.

Take notice that on January 30, 1995, Mississippi River Transmission Corporation (MRT), submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of January 1, 1995:

Substitute Second Revised Sheet No. 212
Substitute First Revised Sheet No. 213

MRT states that the tariff sheets reflected above are being filed in compliance with the Commission's January 13, 1995 order in the above referenced proceeding. MRT also states that the filing reflects a recalculation of the Excess Revenues to be refunded to Rate Schedules FTS and FSS customers pursuant to Section 17 of its tariff.

MRT states that a copy of the filing has been mailed to each of its customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–3071 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–142–000]**

## Mississippi River Transmission Corp.; Notice of Cash Balance Report

February 2, 1995.

Take notice that on January 30, 1995, Mississippi River Transmission Corporation (MRT), in compliance with the order of the Commission issued September 17, 1993 in MRT's Order No. 636 restructuring proceeding,[1] submits for filing a report providing information for the Commission to determine how MRT's cash balancing program operates and whether any modifications are necessary.

MRT states that copies of the filing are being mailed to each of MRT's customers, the parties in Docket No. RS92–43–000, and the State of Commissions of Arkansas, Illinois, and Missouri.

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, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 1995. 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. 95–3067 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 64 FERC ¶ 61,299 (1993).

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**[Docket No. RP95–143–000]**

## Northwest Pipeline Corp.; Notice of Filing of Report on Storage

February 2, 1995.

Take notice that on January 30, 1995, Northwest Pipeline Corporation (Northwest), in compliance with the Commission requirement in Northwest's restructuring proceeding in Docket No. RS92–69–000[1] submits for filing a report justifying the need to retain storage for system balancing.

Northwest states that copies of the filing are being mailed to each of Northwest's customers, and the parties in Docket No. RS92–69–000.

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, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 1995. 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. 95–3069 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER94–1474–000**

## Pepperell Power Associates Limited Partnership; Notice of Filing

February 2, 1995.

Take notice that on February 1, 1995, Pepperell Power Associates Limited Partnership filed an amendment in this proceeding.

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, N.E., Washington, D.C. 20426, in accordance with Rules

[1] 63 FERC ¶ 61,124 (April 28, 1993); 65 FERC ¶ 61,007 (October 1, 1993).

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 February 13, 1995. 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. 95–3062 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–146–000]**

## Texas Gas Transmission Corp.; Notice of Filing of Report on First Year Storage Operations Under Order No. 636

February 2, 1995.

Take notice that on January 30, 1995, Texas Gas Transmission Corporation (Texas Gas), tendered for filing its report on first year of operation under restructured services pursuant to Order No. 636.

Texas Gas states that the purpose of this filing is to comply with the Commission's Order on Compliance and Restructuring Rule, issued July 16, 1993.[1] The July 16 order directed Texas Gas to file engineering studies related to storage usage after one full operational year under Order No. 636. Texas Gas states that the report is being filed in compliance with the referenced order.

Texas Gas states that copies of the filing are being served upon all parties in Docket No. RS94–24–000.

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, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 1995. 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. 95–3070 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP92–137–034]**

## Transconinental Gas Pipe Line Corp.; Notice of Report of Refunds

February 2, 1995.

Take notice that on January 17, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing with the Federal Energy Regulatory Commission (Commission) its refund report made to comply with the Commission's order dated November 4, 1993 in Docket No. RP92–137–015, *et al.* The filing involves refund amounts to affected storage and transportation customers for the period November 1, 1993 through March 31, 1994.

TGPL states that the report involves storage and transportation refunds calculated for the period November 1993 though March 1994 based on the differences between the amounts billed and the amounts computed utilizing the compliance filing rates approved by the Commission on September 14, 1994, in Docket No. RS92–86–017, *et al.* TGPL further states that the amount refunded is subject to adjustment and that it reserves the right to surcharge each storage and transportation customer, as necessary, in the event the Commission order(s) in the underlying proceedings is reversed on appeal.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–3064 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. RP95–144–000 and CP95–186–000]**

## Tennessee Gas Pipeline Co.; Notice of Petition for Approval of Exit Fee Stipulation

February 2, 1995.

Take notice that on January 30, 1995, Tennessee Gas Pipeline Company (Tennessee), filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for an order approving a Stipulation and Agreement (Stipulation) entered into between Tennessee and Ozark Gas Transmission System (Ozark) on December 9, 1994. The Stipulation establishes conditions under which Tennessee will pay to Ozark an exit fee in return for Ozark agreeing to early termination and abandonment of its upstream transportation service agreement (Contract No. T–602) with Tennessee.

Tennessee requests authorization to: (1) pay a negotiated exit fee to Ozark for the early termination of Ozark/Tennessee firm transportation Contract No. T–602; (2) recover 100 percent of this exit fee through Tennessee's ''Transportation Cost Rate Adjustment'' mechanism as a stranded Account No. 858 cost; (3) abandon its obligations under Contract No. T–602; and (4) abandon by sale to Ozark for the lower of $1.7 million or actual book value a five-mile, 12-inch lateral that interconnects Ozark with Texas Eastern Transmission Corporation (Texas Eastern) in White County, Arkansas.

Tennessee notes that the effectiveness of the Stipulation is contingent on Commission approval of a similar agreement entered into between Ozark and Columbia Gas Transmission Corporation, also entered into on December 9, 1994; and subject to Commission review in Docket No. RP95–98–000.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 23, 1995. Reply comments should be filed on or before March 6, 1995. 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 petition are on file with the

[1] 64 FERC ¶ 61,083 (1993).

Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–3068 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–62–001]**

## Tennessee Gas Pipeline Co.; Notice of Compliance Filing

February 2, 1995.

Take notice that on January 30, 1995, Tennessee Gas Pipeline Company (Tennessee), filed certain information in compliance with the December 30, 1994 Order issued by the Commission in Docket No. RP95–62–000 (Tennessee Gas Pipeline Co., 69 FERC ¶ 61,429 (1994)). Tennessee states that the filing is in response to questions raised by the Commission in its December 30th Order regarding stranded Account No. 858 cost recovery treatment of Tennessee's transportation-by-others contracts.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR Section 385.211. All such protests should be filed on or before February 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–3065 Filed 2–7–95; 8:45 am]

BILLING CODE 6717–01–M

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## Office of Hearings and Appeals

## Notice of Cases Filed; Week of November 14 through November 18, 1994

During the Week of November 14 through November 18, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 2, 1995

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 14 through Nov. 18, 1994]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Nov. 14, 1994 | Cincinnati Gas and Electric Co., Cincinnati, OH. | VEA–0002 | Appeal from Special Assessment to the Uranium Enrichment Decontamination and Decommissioning Fund. *If granted:* The written determination issued by the Department of Energy on October 3, 1994 would be rescinded and Cincinnati Gas and Electric Company would receive a refund of payments made to the Decontamination and Decommissioning Fund. All future obligations of Cincinnati Gas and Electric Company would be cancelled, and Cincinnati Gas and Electric Company's assessment would be adjusted to zero. |
| Nov. 16, 1994 | Victor B. Skaar, Las Vegas, NV. | VFA–0012 | Appeal of an Information Request Denial. *If granted:* The October 21, 1994 Freedom of Information Request Denial issued by the Department of the Air Force would be rescinded, and Victor B. Skaar would receive access to the medical records of 25 people involved in the Palomares incident. |
| Nov. 14, 1994 | Texaco/Rubicon, Inc., Wilmington, DE. | RR321–172 | Request for Modification/Rescission in the Texaco Refund Proceeding. *If granted:* The November 7, 1994 Dismissal Letter (Case Number RF321–18817) issued to Rubicon, Inc. would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding. |

REFUND APPLICATIONS RECEIVED

[Week of Nov. 14 to Nov. 18, 1994]

| Date received | Name of Refund Proceeding/name of refund applicant | Case Number |
|---|---|---|
| 10/25/94 | Glendenning Motor Ways, Inc | RC272–266 |
| 11/16/94 | William A. Minter Oil Co | RF300–21814 |
| 11/17/94 | City of Norwalk, Board of Education | RF300–21815 |

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 14 to Nov. 18, 1994]

| Date received | Name of Refund Proceeding/name of refund applicant | Case Number |
|---|---|---|
| 11/17/94 | Briscoe's LP–Gas Service | RF352–3 |
| 11/17/94 | Propane Sales | RF352–4 |
| 11/17/94 | Harry's Texaco | RF321–21044 |
| 11/17/94 | Carelton Oaks Texaco | RF321–21045 |

[FR Doc. 95–3138 Filed 2–7–95; 8:45 am]

BILLING CODE 6450–01–M

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## Notice of Issuance of Decisions and Orders; Week of November 7 Through November 11, 1994

During the week of November 7 through November 11, 1994 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a

list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*Citizen Action, 11/07/94, VFA–0002*

Citizen Action filed an Appeal from a determination issued by the Energy Information Administration (EIA) of the Department of Energy in response to its request under the Freedom of Information Act (FOIA). Citizen Action sought information regarding an EIA study entitled ''The Short Term Impact of Lower World Oil Prices on the U.S. Economy.'' In considering the Appeal, the Office of Hearings and Appeals found that EIA performed an adequate search for materials. Accordingly, the Appeal was denied.

*Jane Affleck, 11/07/94, VFA–0003*

Ms. Jane Affleck filed an Appeal from a partial denial by the Office of Intergovernmental and External Affairs, Albuquerque Operations Office (AL) of a Request from Information which Ms. Affleck had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the Office of Hearings and Appeals (OHA) found that AL properly applied Exemption 5 to one paragraph of the document requested by Ms. Affleck. The paragraph had previously been reviewed in a decision of the OHA and was found to be both pre-decisional and deliberative. Accordingly, the Appeal was denied.

**Requests for Exception**

*Capozzi Bros. Fuel Company, 11/07/94, LEE–0143*

Capozzi Bros. Fuel Company (Capozzi) filed an Application for Exception requesting permanent relief from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that Capozzi was not experiencing a serious hardship, a gross inequity or an unfair distribution of burdens as a result of the requirement that it file Form EIA–782B. On August 16, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objections to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Capozzi's Application for Exception.

*Cooperative Oil Company, 11/07/94, LEE–0132*

Cooperative Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On August 19, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed with the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Cooperative Oil Company's Application for Exception.

*Hattenhauer Dist. Co., 11/07/94, LEE–0146*

Hattenhauer Distributing Company (Hattenhauer) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' Hattenhauer claimed that it should be relieved of the requirement because it had been filing the Form since 1991 and because the task took the firm's limited office staff four hours to complete each month. In considering this request, the DOE found that Hattenhauer was not suffering a gross inequity or serious hardship. Accordingly, on August 19, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. Neither Hattenhauer nor any other party filed an Objection to that Proposed Decision and Order, and the DOE issued it in final form.

*Johnson Oil Company, 11/07/94, LEE–0121*

Johnson Oil Company filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering Johnson's request, the DOE found that the firm was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

*Pro Fuels, Inc., 11/07/94, LEE–0144*

Pro Fuels, Inc. (Pro Fuels) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Forms EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report,'' and EIA–821, the ''Annual Fuel Oil and Kerosene Sales Report.'' In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Therefore, the DOE denied Pro Fuels' Application for Exception.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Atlantic Richfield Company/Pearl Oil Company | RR304–69 | 11/09/94 |
| City of Bridgeton et al | RF272–94918 | 11/09/94 |
| City of El Cajon | RR272–182 | 11/08/94 |
| Custer County High School | RF272–79848 | 11/07/94 |
| Dundee Central School District #1 et al | RF272–84617 | 11/08/94 |
| Farmers Union Oil Co. et al | RF272–92031 | 11/08/94 |
| Franklin County Community School Corporation et al | RF272–81584 | 11/09/94 |
| Gulf Chemical & Metallurgical et al | RF272–93775 | 11/08/94 |
| Gulf Oil Corporation/Hwy 31 Gulf et al | RF300–13971 | 11/10/94 |
| Gulf Oil Corporation/Jesse Cordell General Delivery et al | RF300–21393 | 11/10/94 |
| Gulf Oil Corporation/St. Andrews Gulf | RF300–18756 | 11/07/94 |
| St. Andrews Gulf | RF300–21800 | |
| St. Andrews Gulf | RF300–21812 | |
| Melton Gulf | RF272–89346 | 11/09/94 |
| Olin Corporation | RF272–93325 | 11/08/94 |
| Paul Musselwhite Trucking Co. | RF272–93414 | 11/08/94 |
| Rio Grande Sunoco | RF272–97182 | 11/08/94 |
| Texaco Inc./Jimmy Cooke's Texaco | RF321–20429 | 11/08/94 |
| Texaco Inc./Strawn Salvage Co. et al | RF321–12525 | 11/10/94 |

| | | |
|---|---|---|
| Warrick Co. Farm Bureau Coop | RF272–93758 | 11/08/94 |
| Mauston Farmers Coop Assn. | RF272–93765 | |
| Montana-Dakota Utilities Co. | RF272–93779 | |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| CSX Transportation, Inc | RF321–20757 |
| Dennis McQuade | VFA–0006 |
| E.C. Crosby & Sons, Inc | RF321–20695 |
| Economy Rentals, Inc | RF272–93453 |
| Elgin Wipf | RF321–11393 |
| Englefield Oil Company | LEE–0148 |
| Faulkner Bros., Inc | RF321–4676 |
| Ferro Corporation | RF272–93208 |
| International Business Machines Corp. | RF272–91403 |
| McGil Specialized Carriers | RF321–19853 |
| Petro Ltd | RF349–19 |
| Ray's Gulf | RF300–13246 |
| Rubicon Inc | RF321–18817 |
| Sellers' Texaco | RF321–482 |
| Wayne's Texaco | RF321–20660 |
| Wempner's Texaco | RF321–12919 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holiday. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

February 2, 1995.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 95–3139 Filed 2–7–95; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[SWH–FRL–5151–3]**

## Hazardous Waste Management System: Land Disposal Restrictions

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

**ACTION:** Notice of approval of application for a case-by-case extension of land disposal restrictions effective date.

**SUMMARY:** EPA is today approving the application submitted by Great Lakes Chemical Corporation (Great Lakes), requesting an extension of the June 30, 1994, effective date of the RCRA land disposal restrictions (LDR) treatment standards applicable to wastewaters with the hazardous wastes codes K117, K118, K131, K132, and F039. to be granted such a request, the applicant must demonstrate, among other things, that there is insufficient capacity to manage its waste and that he has entered into a binding contractual commitment to construct or otherwise provide such capacity, but due to circumstances beyond its control, such capacity could not reasonably be made available by the effective date. As a result of this action, Great Lakes will be allowed to land dispose of its K117, K118, K131, K132, and F039 wastes, until June 30, 1995, without being subject to the land disposal restrictions applicable to such wastes. If warranted, EPA may grant a renewal of this extension, for up to one additional year, which, if requested and granted, would extend the effective date of the LDR for these wastestreams to June 30, 1996.

**EFFECTIVE DATE:** This approved extension of the LDR effective date becomes effective January 31, 1995.

**ADDRESSES:** The docket for this action is located at the EPA Region 6 office, 1445 Ross Avenue, Dallas, Texas 75202, and is available for review during normal business hours, 8:00 a.m. through 4:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline, at (800) 424–9346 (toll-free) or (703) 412–9810, in the Washington, DC metropolitan area or Gus Chavarria, Chief UIC Section, EPA—Region 6, telephone (214) 665–7166.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Congressional Mandate*

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA), to impose additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required EPA to develop regulations that would impose restrictions on the land disposal of hazardous wastes. In particular, Sections 3004 (d) through (g) prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment except that wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. Section 3004(m) requires EPA to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.''

In developing such a broad program, Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment, may not be available by the applicable statutory effective dates. Section 3004(h)(1) authorizes EPA to grant a variance (based on the earliest dates that such capacity will be available, but not to exceed two years) from the effective date which would otherwise apply to specific hazardous wastes. In addition, under Section 3004(h)(2), EPA is authorized to grant an additional capacity extension of the applicable deadline on a case-by-case basis for up to one year. Such an extension is renewable once for up to one additional year.

On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program, including the procedures for submitting case-by-case extension applications.

On August 18, 1992, EPA published a final rule (57 FR 37194, 37252), establishing treatment standards under the land disposal restrictions (LDR) program for certain listed hazardous wastes, including the following:

1. K117—Wastewaters from the reactor vent gas scrubber in the production of ethylene dibromide via the bromination of ethylene.
2. K118—Spent adsorbent solids from the purification of EDB produced by bromination of ethylene.
3. K131—Wastewater from the reactor and acid dryer from the production of methyl bromide.
4. K132—Spent adsorbent and wastewater separator solids from the production of methyl bromide.

Because of a determination that available treatment, recovery, or disposal (TRD) capacity did not exist at that time for wastewaters K117, K118, K131, and K132 that are underground injected, EPA granted a two-year national capacity variance for these wastes. The variance expired June 30, 1994. The mixture of wastes for which Great Lakes requested an extension of the LDR treatment standards also will be subject to the treatment standards for F039 since that is a component of the

mixture. (See the footnote in 59 FR 41742.)

On August 15, 1994, EPA proposed to approve the case-by-case extension application submitted by Great Lakes Chemical Corporation for the K117, K118, K131, K132 and F039 wastes generated at its main plant (EPA I.D. ARD043195429) located in El Dorado, Arkansas. (See 59 FR 41741 for details of the proposed rule.) These waters was comprised of recovered groundwater, leachates from two on-site closed landfills, and process wastewater that are mixed prior to underground injection. The proposed extension would allow Great Lakes to continue disposing of these wastes in on-site underground injection wells until June 30, 1995, while they construct a treatment unit to treat the leachates to Best Demonstrated Advanced Technology (BDAT) standards. As discussed below, only one public comment was received in response to the proposed notice. The sole commenter was Great Lakes.

*B. Applicant's Demonstrations Under 40 CFR 268.5 for Case-by-Case Extension*

Case-by-case extension applications must satisfy the requirements outlined in 40 CFR 268.5. EPA believes that Great Lakes, owner/operator of the El Dorado, Arkansas facility, at which a treatment unit is being constructed to provide treatment of leachates to meet BDAT standards, has made the necessary demonstrations to be granted a case-by-case extension. Based on the timeline submitted by Great Lakes, projecting completion of the leachates treatment until by June 1995, EPA is granting an extension of the current LDR effective date, until June 30, 1995. The following is a discussion of each of the seven demonstrations of 40 CFR 268.5(a)(1)–(7) made by Great Lakes: Section 268.5(a)(1). The applicant has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage its waste in accordance with the effective date of the applicable restriction (i.e., June 30, 1994).

Great Lakes initially asked ten hazardous waste management facilities located throughout the nation whether they could treat the waste for which the case-by-case extension is being requested. As discussed in the proposed notice, five of these facilities indicated they, collectively, had between 298,000 to 385,000 gallons per day of available treatment capacity. Thus, there may be available treatment capacity to manage approximately two-thirds of the more than 500,000 gallons per day of waste being generated by Great Lakes, for which a case-by-case extension was requested. In order to ship these wastes off-site, however, Great Lakes would need to obtain a permit and construct a transfer facility. Consequently, although off-site treatment capacity is available to treat a portion of Great Lakes' wastewaters, EPA believes considerably less time is necessary to construct the proposed treatment system and obtain the necessary permit modifications than it would take for Great Lakes to construct facilities to transport these wastewaters to off-site treatment. As noted in its public comments, Great Lakes, subsequent to EPA's notice proposing to grant the extension sought by Great Lakes, received information that a commercial facility may have sufficient capacity to manage the full quantity of leachates being generated daily at the El Dorado, Arkansas facility. (For further information, see public comment submitted by Great Lakes in response to the proposed approval of its case-by-case extension (59 FR 41741). This information can be found in Docket No. F–94–GLCP–FFFFF.) Great Lakes, given its extensive previous experience in evaluating the feasibility of using biological treatment for this waste, has expressed reservations regarding the acceptability of such treatment. In any case, as pointed out by Great Lakes, use of this treatment capacity, even if technically acceptable, poses the same permitting and construction requirements needed to use capacity at any other off-site commercial facility. Therefore, EPA continues to agree that the lack of transfer facilities needed by Great Lakes to use the available treatment capacity off-site to treat the wastes generated at its El Dorado, Arkansas facility provide an adequate basis to fulfill the requirements of this demonstration. Section 268.5(a)(2). The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, or disposal capacity that meets the treatment standards specified in 40 CFR Part 268, subpart D or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

Great Lakes provided EPA with sufficient documentation, including purchase orders for equipment and a contract for the installation of equipment and the construction of the treatment system demonstrating that it is fully committed to construction of the necessary on-site treatment capacity. EPA is convinced that Great Lakes is making a good-faith effort to construct a treatment unit that will treat the K117, K118, K131, K132, and K039 wastes generated at its El Dorado, Arkansas facility to BDAT standards. Another issue discussed in the proposed notice was EPA's recent proposal to list certain 2,4,6-tribromophenol (TBP) wastes as hazardous wastes and to add these wastes to the list of hazardous constituents in appendix VIII of 40 CFR part 261 (see 59 FR 24530, May 11, 1994). In its comments submitted in response to EPA's proposed approval of the case-by-case extension, Great Lakes noted that these TBP wastes are not and have never been generated at the El Dorado facility. EPA believes Great Lakes has provided the necessary documentation to meet the requirements of this demonstration.

Section 268.5(a)(3). Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

As discussed in the proposed notice of approval of the Great Lakes application for a case-by-case extension of the LDR effective date, EPA believes that Great Lakes has made a good-faith effort to provide treatment capacity by the effective date. Great Lakes has aggressively pursued the development of technology capable of treating their wastes to BDAT standards. EPA believes Great Lakes has acted in good faith to provide the necessary treatment capacity but that such capacity could not reasonably be made available by June 30, 1994, the effective date of the land disposal restriction for these wastes. As such, EPA believes this demonstration of non-availability of capacity, due to circumstances beyond the applicant's control, is adequate for the purposes of this demonstration.

Section 268.5(a)(4). The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

Great Lakes has shown that the treatment system to be constructed at its El Dorado, Arkansas facility has a design capacity of 28,800 gallons per day (20 gallons per minute) and thus has adequate capacity to treat the leachates that exceed BDAT treatment standards, generated at a rate of up to 10 gallons/minute, prior to its being managed by underground injection. Great Lakes believes that treatment of these leachates to BDAT standards will allow the remaining portion of the

500,000 gallons/day of generated wastes covered by this extension (i.e., those wastes currently mixed with the leachates) to meet BDAT standards without further treatment. As such, the planned treatment system is expected to have sufficient treatment capacity. Thus, EPA believes that Great Lakes has adequately demonstrated that the treatment unit to be constructed will provide the necessary treatment capacity to treat the entire quantity of these leachates for which Great Lakes is requesting a case-by-case extension.

Section 268.5(a)(5). The applicant provides a detailed schedule for obtaining operating and construction permits or an outline of how and when alternative capacity will be available.

Great Lakes has provided EPA with a detailed schedule for the construction and permitting of the treatment system to be constructed at its El Dorado, Arkansas facility. Although Great Lakes had planned to begin construction of the treatment system in March 1994, final approval of required State permits has not yet been received. Great Lakes continues to believe that the leachate treatment unit will achieve full operational status by June 30, 1995. EPA believes that Great Lakes has provided the necessary construction and permitting milestones for bringing its treatment system on-line and therefore meets the requirements of this demonstration.

Section 268.5(a)(6). The applicant has arranged for adequate capacity to manage its waste during an extension, and has documented the location of all sites at which the waste will be managed.

During the approved extension period, Great Lakes will inject these wastes into its on-site Class I wells it has been using for this purpose. Great Lakes has shown that these wells will have the necessary capacity available to manage these wastes during the approved extension. EPA believes that Great Lakes has met the requirements of this demonstration.

Section 268.5(a)(7). Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

Great Lakes will not be using any surface impoundments or landfills to manage this waste during the extension period.

## II. Response to Comments

Only one public comment was submitted in response to EPA's notice to propose approval of the case-by-case application submitted by Great Lakes. This sole comment was submitted by the applicant, Great Lakes. Where appropriate in this notice, EPA has noted and addressed those issues raised by the applicant in its comments.

## III. Consultation With State

In accordance with 40 CFR 268.5(e), EPA consulted with the State of Arkansas (Arkansas Department of Pollution Control and Ecology) to determine if the State had any permitting, enforcement, or other concerns regarding this respective facility that EPA should take into consideration in deciding to grant or deny Great Lakes' application for a case-by-case extension of the LDR effective date. The State of Arkansas encouraged EPA to approve the case-by-case application submitted by Great Lakes.

## IV. EPA's Action

EPA believes that Great Lakes has made and is continuing to make a good-faith effort towards providing sufficient and appropriate treatment capacity for the K117, K118, K131, K132, and F039 wastes that are the subject of its case-by-case application. Therefore, EPA is approving an extension of the applicable LDR effective date for these wastes generated at the El Dorado, Arkansas facility, until June 30, 1995. As such, these wastes may be managed by underground injection until June 30, 1995 (unless the extension is renewed for up to one additional year, in which case the extension would expire no later than June 30, 1996), which the proposed treatment system is being constructed. This extension remains in effect unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or the facility violates any law or regulations implemented by EPA.

Having been granted this case-by-case extension of the LDR effective date, Great Lakes must immediately notify EPA of any change in the demonstrations made in the petition (40 CFR 268.5(f)). Great Lakes must also submit monthly progress reports that describe the progress being made towards obtaining adequate alternative capacity, identify any delay or possible delay in developing the capacity, and describe the mitigating actions being taken in response to the event (40 CFR 268.5(g)). (Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Dated: January 31, 1995

**O. Thomas Love,**

*Acting Director, Water Management Division.*

[FR Doc. 95–3116 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–P

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**[OPP–00401A; FRL–4935–7]**

## FIFRA Scientific Advisory Panel; Open Meeting; Change of Agenda

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

**ACTION:** Notice of open meeting.

**SUMMARY:** In the **Federal Register** of January 25, 1995, EPA announced a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel on Plant Pesticides to review a set of scientific issues being considered by the Agency in connection with Monsanto's application for registration of a transgenic plant pesticide. This notice announces an agenda modification to the meeting. The Agency's original agenda focussed on the plant pesticide containing the active ingredient *Bacillus thuringiensis* subsp. tenebrionis delta endotoxin protein as produced by the CryIIIA gene and its controlling sequences in potatoes. The discussion will now include risk issues associated with the production of *Bacillus thuringiensis* tenebrionis delta endotoxin in other plants.

**DATES:** The meeting will be held on Wednesday, March 1, 1995, from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at: Crystal Mall #2, 11th Floor Conference Room (Fish Bowl), 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 40l M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 819B, CM #2, 192l Jefferson Davis Highway, Arlington, VA, (703) 305–5369 or 7351.

Copies of documents may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 40l M St., SW., Washington, DC 20460. Office location and telephone number: Rm. ll28 Bay, CM #2, l92l Jefferson Davis Highway, Arlington, VA, (703) 305–5805 or 5454.

**SUPPLEMENTARY INFORMATION:** For additional information concerning data

that are available or the submission of public comments, refer to the **Federal Register** of January 25, 1995 (60 FR 4910), or contact Robert Jaeger at the address or telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 1, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 95–2986 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–00402; FRL–4934–2]**

## Label Review Manual; Notice of Availability

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

**ACTION:** Notice of availability.

**SUMMARY:** EPA is announcing the immediate availability of the Label Review Manual. The Label Review Manual was developed to serve as a training tool for new employees and as guidance for product team members who are responsible for performing label reviews. It is the goal of this manual to improve the quality of labels as well as increase the consistency of label reviews. Interested parties may order copies of the Label Review Manual as set forth in the **ADDRESSES** unit of this notice.

**DATES:** Copies of the Label Review Manual are now available.

**ADDRESSES:** Copies of the Label Review Manual may be ordered from the National Technical Information Service (NTIS). The order number is: PB 95–159828. By mail: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Telephone and fax number: (703) 487–4650 and (703) 321–8547. The Label Review Manual is also available in electronic form on FedWorld, an information service of NTIS. Electronic access to FedWorld can be through Internet-telnet to:fedworld.gov; or connect via modem by dailing (703) 321–8020, with the settings Parity = none, Data Bits = 8, Stop Bit = (N-8-1), with terminal emulation = ANSI or VT 100. FedWorld accomodates speeds up to 9600 baud.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Downing (7505W), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703) 308–8318.

**SUPPLEMENTARY INFORMATION:** The Registration Division's Labeling Center for Excellence (LCE) within the Office of Pesticide Programs (OPP) developed this manual to serve as a training tool for its new employees and as guidance for product management team members who are responsible for performing label reviews. It is the goal of this manual to improve the quality of labels as well as increase the consistency of label reviews.

Information in this manual is presented in the order of use by reviewers. The first two chapters of this manual provide an overview concerning what is a pesticide and what constitutes a pesticide label and labeling. The third chapter discusses general label format and legibility requirements, identifies the major parts of the label and directs the user to the appropriate chapter which contains additional information. Other chapters provide the reader with step-by-step instructions for reviewing a pesticide label and any associated actions such as the Pesticide Registration Action Tracking System (PRATS) entries for label reviews and situations where the Confidential Statement of Formula affects the label language. The last chapter describes how unique labeling issues are handled.

The Label Review Manual will be updated on an ''as needed'' basis to reflect new and changing labeling policies.

### List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, and Pesticide labels.

Dated: February 1, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–3113 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

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**[FRL–5151–6]**

## Open Meeting of the FACA Subcommittee for the Metal Finishing Industry Under the Common Sense Initiative

**AGENCY:** EPA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the Environmental Protection Agency (EPA) is convening the second open meeting of the Metal Finishing Subcommittee of EPA's Common Sense Initiative (CSI) Council, on February 24, 1995. The meeting has several purposes: (1) to discuss outstanding procedural matters; (2) to hear reports from and discuss issues relating to the CSI metal finishing workgroups; and (3) to discuss other substantive issues of importance to this sector. The meeting is open to the public without need for advance registration.

**DATES:** The Subcommittee will meet on February 24, 1995. The meeting will begin at approximately 9 a.m. EST and run until about 5 p.m. Open workgroup discussions will occur on February 23rd, at the same location as the FACA meeting.

**ADDRESSES:** The Subcommittee will meet at the Sheraton Crystal City Hotel, located at 1800 Jefferson Davis Highway, Arlington, VA 22202. The hotel telephone number id (703) 486–1111.

**FOR FURTHER INFORMATION CONTACT:** Bob Benson of EPA's Office of Policy, Planning and Evaluation, at (202) 260–8668.

Dated: February 2, 1995.

**Robert S. Benson,**

*CSI Metal Finishing Sector Staff Lead, Designated Federal Official.*

[FR Doc. 95–3044 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–M

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**[PF–617; FRL–4926–4]**

## Pesticide Tolerance Petitions

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

**ACTION:** Notice.

**SUMMARY:** EPA announces the filing of pesticide petitions and food/feed additive petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. EPA also announces the amendment of a pesticide petition and the withdrawal of a food/feed additive petition.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (7505C), Attention: [Product Manager (PM) named in the petition], Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

| Product Manager | Office location & Telephone no. | Address |
|---|---|---|
| George LaRocca (PM-13) | Rm 204, CM #2, 703-305-6100 | 1921 Jefferson Davis Hwy., Arlington, VA |
| Phil Hutton (BPPD) | 5th Floor, CS #1, 703-308-8260 | 2800 Crystal Drive, Arlington, VA |
| Leonard Cole (PM-21) | Rm. 227, CM #2, 703-305-6900 | 1921 Jefferson Davis Hwy., Arlington, VA |
| Cynthia Giles-Parker (PM-22) | Rm. 229, CM #2, 703-305-5540 | Do. |
| Joanne Miller (PM-23) | Rm. 237, CM #2, 703-305-7830 | Do. |
| Robert Taylor (PM-25) | Rm. 241, CM #2, 703-305-6800 | Do. |

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide (PP) and/or food/feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. This document also announces one amended petition and one withdrawn petition.

## Initial Filings

1. *PP 4F4342*. AgrEvo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, proposes to amend 40 CFR part 180 by establishing a regulation to permit the combined residues of flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil in or on peanut nutmeats at 1.0 ppm, peanut hulls at 5.0 ppm, peanut vines at 15 ppm, peanut hay at 15.0 ppm, meat, meat by-products and milk of cattle, goats, horses, hogs, and sheep at 0.05 ppm, fat of cattle, goats, horses, hogs, and sheep at 0.10 ppm, liver of cattle, goats, horses, hogs, and sheep at 2.0 ppm, kidney of cattle, goats, horses, hogs, and sheep at 1.0 ppm, and poultry meat, meat by-products, fat and eggs (including turkeys) at 0.05 ppm. (PM-21)

2. *PP 4F4369*. Monsanto Co., 800 N. Lindberg Blvd., St. Louis, MO 63167, proposes to amend 40 CFR 180.364 by establishing a regulation to permit combined residues of glyphosate [*N*-(phosphonomethyl)glycine] in or on soybean, forage at 100 ppm, resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate. (PM-25)

3. *PP 4F4380*. AgrEvo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil in or on rice grain at 2.0 ppm and rice straw at 8.0 ppm. (Phil Hutton)

4. *PP 4F4388* EcoScience Corp., 377 Plantation St., Worcester, MA 01605, proposes to amend 40 CFR part 180 by establishing an exemption from requirement of a tolerance for the residues of the biological fungicide *Pseudomonas syringae* strain ESC-11 in or on all raw agricultural commodities when used as a post-harvest application to harvested produce. (PM-21)

5. *PP 4F4389*. Mycogen Corp., 4930 Carroll Canyon Rd., San Diego, CA 92121, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for the residues of the biological insecticide CrylA(b), CrylA(c), and CrylC derived delta endotoxins of *Bacillus thuringiensis* encapsulated in killed *Pseudomonas fluorescens*. (Phil Hutton)

6. *PP 4F4394*. Consep, Inc., 213 SW. Columbia St., Bend, OR 97702-1013, proposes to amend 40 CFR part 180 by establishing an exemption from requirement of a tolerance for Consep SPR1 Tomato Pinworm Pheromone (TPW), Consep SPR2 Oriental Fruit Moth Pheromome (OFM), and Consep SPR3 Codling Moth Pheromone (CM). (Phil Hutton)

7. *PP 4F4396*. Mycogen Corp., 4980 Carroll Canyon Rd., San Diego, CA 92121, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of pelargonic acid on apples and pears. (PM-22)

8. *PP 4F4397*. EcoScience Corp., 377 Plantation St., Worcester, MA 01605, proposes to amend 40 CFR part 180, by establishing an exemption from requirement of tolerance for *Beauvera bassiana* Strain ESC 170 in or on all raw agricultural Commodities. (Phil Hutton)

9. *PP 4F4398*. Abbott Laboratories, Dept. 28R, Bldg. A1, 1401 Sheridan Rd., North Chicago, IL 60064-4000, proposes to amend 40 CFR part 180 by establishing an exemption from requirement of tolerance for dried fermentation solids and solubles of *Myrothecium verrucaria* in or on all raw agricultural commodities. (PM-21)

10. *PP 4F4399*. FMC Corp., Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR 180.418 by establishing a regulation to permit residues of cypermethrin, (±)-*alpha*-cyano-(3-phenoxyphenyl) (±) *cis/trans*-3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropane carboxylate (cypermethrin) in or on alfalfa seed at 0.50 ppm, alfalfa forage at 11.0 ppm, alfalfa hay at 34.0 ppm, milk at 0.10 ppm, meat at 0.15 ppm, fat at 1.0 ppm, poultry at 0.05 ppm, and eggs at 0.05 ppm. (Phil Hutton)

11. *PP 4F4405*. Du Pont, Agricultural Products, Barley Mill Plaza, P. O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of herbicide nicosulfuron, [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl))-*N*,*N*-dimethyl], in or on corn, sweet (kernels plus cobs with husks removed) at 0.1 ppm, and corn, sweet, forage at 0.1 ppm. (PM-25)

12. *PP 4F4406*. Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of insecticide tefluthrin (2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1-*alpha*, 3-*alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-

dimethylcyclopropanecarboxylate and its (1-*alpha*, 3-*alpha*)-(*Z*)-(±)-3-(chloro-3,3,3-trifluoro-prop-1-enyl)-2,2-dimethyl-cyclopropanecarboxylic acid in or on corn, fresh (including sweet K and CWHR) at 0.06 ppm, and corn, forage and fodder, sweet at 0.06 ppm. (PM-13)

13. *PP 4F4407*. FMC Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites 3-hydroxymethyl-sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) in or on wheat forage at 0.10 ppm, wheat straw at 0.10 ppm, wheat grain at 0.10 ppm, corn fodder at 0.10 ppm, corn silage at 0.10 ppm, corn grain at 0.10 ppm, soybean seed and aspirated grain fractions at 0.05 ppm. (PM-23)

14. *PP 4F4412*. DowElanco, 9330 Zionville Rd., Indianapolis, IN 46268-1054, proposes to amend 40 CFR 180.292 by establishing a regulation to permit residues of the herbicide picloram in or on sorghum grain at 0.3 ppm, sorghum forage at 0.2 ppm, and sorghum fodder at 0.5 ppm. (PM-25)

15. *PP 4F4413*. BASF Corp., Agricultural Products, P. O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 180.412 by establishing a regulation to permit combined residues of the herbicide sethoxydim, 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on cucurbit vegetables at 4.0 ppm. (PM-25)

16. *PP 4F4424*. Ciba Plant Protection, P. O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR 180.434 by establishing a regulation to permit the residues of propiconazole in or on soybeans at 0.5 ppm, soybean forage at 8.0 ppm, soybean fodder/straw at 8.0 ppm, soybean hay at 25.0 ppm, dry beans at 0.5 ppm, dry bean vines/forage at 8.0 ppm, and dry bean hay at 8.0 ppm. (PM-21)

17. *FAP 4H5703*. AgrEvo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, proposes to amend 40 CFR 180.185 by establishing a food additive regulation to permit combined residues of flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil in the following processed food commodities, rice hulls at 7.0 ppm, and rice bran at 3.0 ppm, when present therein as a result of application of the fungicide to growing crops. (Phil Hutton)

18. *FAP 4H5706*. Rhone-Poulenc AG Co., P. O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 186.150 by establishing a feed additive regulation for aldicarb, aldicarb sulfoxide, and aldicarb sulfone in dried potato peel at 2.0 ppm. (PM-19)

19. *FAP 4H5708*. Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524-3402, proposes to amend 40 CFR parts 185 and 186 by establishing food/feed additive regulations for residues of maleic hydrazide and has submitted potato processing studies and petitions to increase the tolerance to 200 ppm in potato chips, potato granules, and potato waste. (PM-22)

20. *FAP 4H5710* Roussel UCLAF Corp., 95 Chestnut Ridge Rd., P. O. Box 30, Montvale, NJ 07645, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of deltamethrin, (*s*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2-2 dibromovinyl)-2,2-dimethylcyclopropanecarboxylate, in or on all food items that may be present as a result of surface, spot, and/or crack and crevice treatments in food-handling establishments. (PM-13)

21. *FAP 4H5711*. AgrEvo Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit combined residues of flutolanil, *N*-[3-(1-methylethoxy)phenyl]-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-trifluoro-methyl benzoic acid and calculated as flutolanil in the following processed food commodities, peanut meal at 1.0 ppm and soapstock at 0.50 ppm, when present therein as a result of application of the fungicide to growing crops. (PM-21)

22. *FAP 5H5712*. Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P. O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR 185.1250(c) and 186.1250(c) to add conditions for use of a dust formulation containing cyfluthrin as a crack or crevice treatment in areas of food/feed-handling establishments. (PM-13)

**Amended Filing**

23. *PP 4F4317*. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, is revising the petition which proposed an exemption from requirement of tolerance for combined residues of the fungicide myclobutanil, *alpha-butyl-alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its metabolite, RH-9090, *alpha*-(3-hydroxybutyl)-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free bound) in or on the raw agricultural commodity cottonseed by proposing establishment of a tolerance of 0.02 ppm for the combined residues in or on cottonseed. (PM-21)

**Withdrawn Filing**

24. *FAP 2H5636*. Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has requested the withdrawal without prejudice to future filing of FAP 2H5636, which published in the **Federal Register** of June 10, 1992 (57 FR 24647) and proposed to amend 40 CFR part 186 by establishing a feed additive regulation to permit the residues of Bayleton, 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-2,4-triazol-1-yl)-2-butanone, in or on pineapple bran at 5.0 ppm. (PM-22)

**List of Subjects**

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

**Authority:** 7 U.S.C. 136a.

Dated: January 19, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–2705 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–30330A; FRL–4933–2]**

## Certain Companies; Approval of Pesticide Product Registrations

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

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of applications to register the pesticide products ETOC Technical Grade and Evercide Residual Ant and Roach Spray 2543, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6100).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of July 1, 1992 (57 FR 29311), which announced that Sumitomo Chemical Co., Ltd., 5–33 Kitahama, 4-Chome, Chou-Ku Osaka, Japan had submitted an application to register the product ETOC Technical Grade (10308–RE), containing the active ingredient *RS*-2-methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl-(1*RS*)-*cis*, *trans*-chrysanthemate at 93 percent. The McLaughlin Gormley King Co., 8810 10th Avenue North, Minneapolis, MN 55427–4372, also submitted an application for the product Evercide Residual Ant and Roach Spray 2543 (1021–RANR), containing the ingredients *RS*-2-methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl-(1*RS*)-*cis*, *trans*-chrysanthemate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and *N*-octyl bicycloheptene dicarboximide at 0.03, 0.05, and 0.25 percent respectively, active ingredients not included in any previously registered products.

The applications were approved on December 23, 1994, as ETOC Technical Grade for formulating use only (EPA Reg. No. 10308–12) and Evercide Residual Ant and Roach Spray 2543 for use on nonfood areas of kennels, commercial bulidings, hotels, restaurants, and food processing facilities (EPA Reg. No. 1021–1601).

The Agency has considered all required data on risks associated with the proposed use of *RS*-2-methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl-(1*RS*)-*cis*, *trans*-chrysanthemate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and *N*-octyl bicycloheptene dicarboximide, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *RS*-2-methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl-(1*RS*)-*cis*, *trans*-chrysanthemate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and *N*-octyl bicycloheptene dicarboximide when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on *RS*-2-methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl-(1*RS*)-*cis*, *trans*-chrysanthemate, (*S*)-cyano(3-phenoxyphenyl)methyl-(*S*)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and *N*-octyl bicycloheptene dicarboximide.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

## List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 24, 1995.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–2706 Filed 2–7–95; 8:45 am]

**BILLING CODE 6560–50–F**

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**[PF–620; FRL–4935–6]**

## Pesticide Tolerance Petitions

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

**ACTION:** Notice.

**SUMMARY:** EPA announces the amendment of two pesticide petitions and one food/feed additive petition and the withdrawal of a pesticide petition.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (7505C), Attention: [Product Manager (PM) named in the petition], Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

| Product Manager | Office location & Telephone no. | Address |
|---|---|---|
| Phil Hutton (BPPD) | 5th Floor, CS #1, 703-308-8260 | 2800 Crystal Drive, Arlington, VA. |
| Dennis Edwards (PM-19) | Rm. 207, CM #2, 703-305-6386 | 1921 Jefferson Davis Hwy., Arlington, VA. |

**SUPPLEMENTARY INFORMATION:** EPA has received amendments to pesticide (PP) and/or food/feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. EPA has also received a request to withdraw without prejudice to future filing a pesticide peitition. The petitions are as follows:

### Amended Petitions

1. *PP 3F4231.* Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120-0013, has submitted a revised petition, notice of which originally appeared in the **Federal Register** of October 21, 1993 (58 FR 54354). The revised petition proposes that 40 CFR part 180 be amended to establish tolerances for combined residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid, on the following commodities: Fruiting vegetables (including tomato, eggplant, and pepper) at 1.0 part per million (ppm); *Brassica* (cole) leafy vegetables (including broccoli, cauliflower, Brussels sprouts, and cabbage at 3.5 ppm; lettuce, head and leaf at 3.5 ppm; and grapefruit at 1.0 ppm. (PM 19)

2. *PP 4F4318.* Myotech Corp., 630 Utah Ave., P.O. Box 4109, Butte, MT 59702, has submitted a revised petition, notice of which originally appeared in the **Federal Register** of July 13, 1994 (59 FR 35718). The revised petition proposes that 40 CFR part 180 be amended by establishing a regulation to exempt from the requirement of a tolerance residues of the insecticide *Beauvaria bassiana* strain GHA in or on all raw agricultural commodities. (Phil Hutton)

3. *FAP 3H5675.* Miles, Inc., Agricultural Div., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted a revised food/feed additive petition, notice of which originally appeared in the **Federal Register** of October 21, 1993 (58 FR 54356). The revised petition proposes that 40 CFR parts 185 (food additives) and 186 (feed additives) be amended to establish tolerances for combined residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid, in or on the following food additive commodities: Tomato, puree at 3.0 ppm, tomato, paste at 6.0 ppm, and grape, raisin and juice at 1.5 ppm; and in or on the following feed additive commodities: Tomato, pomace (wet or dried) at 4.0 ppm; grape, pomace (wet or dried) at 5.0 ppm; and grape, raisin waste at 15.0 ppm. (PM 19)

### Withdrawn Petition

4. *PP 1E2573.* Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018-3300, has requested to withdraw without prejudice to future filing its petition to establish tolerances for residues of quinalphos (*O,O*-diethyl *O*-2-quinoxalinyl phosphorothioate) at 0.2 ppm in or on apples, 0.2 ppm in or on citrus, and 0.1 ppm in or on tomatoes. Sandoz made the request in a letter dated January 5, 1995. (PM 19)

### List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

**Authority:** 7 U.S.C. 136a.

Dated: February 2, 1995.

**Janet L. Andersen,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 95–3115 Filed 2–7–95; 8:45 am]

BILLING CODE 6560–50–F

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2055]**

### Petition for Reconsideration of Actions in Rulemaking Proceedings

February 3, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed February 23, 1995. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 73, subpart G, of the Commission's Rules Regarding the Emergency Broadcast System. (FO Docket No. 91–301 and FO Docket No. 91–171)

Number of Petitions Filed: 5.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–3091 Filed 2–7–95; 8:45 am]

BILLING CODE 6712–01–M

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**[WT Docket No. 95–11; DA 95–83]**

### Designation of Amateur License Renewal Application for Hearing

**AGENCY:** Federal Communications Commission.

**ACTION:** Hearing designation order.

**SUMMARY:** This Order designates the application of Herbert L. Schoenbohm to renew his amateur radio station license (KV4FZ) and his Amateur Extra Class operator license for hearing on the basis of a criminal conviction.

**FOR FURTHER INFORMATION CONTACT:** Thomas D. Fitz-Gibbon, Enforcement Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 418–0693.

**SUPPLEMENTARY INFORMATION:**

1. This is a summary of the Order adopted January 18, 1995, and released January 30, 1995. The complete text of this Order may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

2. The Order asserted that Mr. Herbert L. Schoenbohm has applied for renewal of his amateur service station and operator licenses.

3. The Order asserted further that, in Government v. Schoenbohm, No. Crim: 1991/0108 (D.V.I. Dec. 30, 1992), Mr. Schoenbohm was convicted in the U.S. District Court for the District of the Virgin Islands (District Court) of violating 18 U.S.C. 1029(a)(1) (fraudulent use of counterfeit access device); and that, on appeal, the U.S. Court of Appeals for the Third Circuit affirmed Mr. Schoenbohm's conviction. United States v. Schoenbohm, No. 93–7516 (Third Circuit July 22, 1994).

4. The Order alleged that, in view of the criminal conviction described above, Mr. Schoenbohm apparently lacks the requisite qualifications for a renewal of his amateur service licensee.

5. The Order designated Mr. Schoenbohm's application for hearing upon the following issues:

(a) To determine whether, in light of the conviction described above, Herbert L. Schoenbohm is qualified to renew his amateur service licenses.

(b) To determine, in light of the foregoing issue, whether granting Herbert L. Schoenbohm's application

would serve the public interest, convenience and necessity.

6. The Order placed the burden of proceeding with the introduction of evidence and the burden of proof upon the respondent as to all issues.

Federal Communications Commission.

**Robert H. McNamara,**

*Acting Chief, Private Radio Division.*

[FR Doc. 95–3092 Filed 2–7–95; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Compendium of Flood Map Changes

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice provides a listing of changes to FEMA flood maps made during the preceding three (3) month period.

**DATES:** The listing includes changes to FEMA flood maps that became effective October 1, 1994 through December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** William R. Locke, Director, Hazard Identification and Risk Assessment Division, Mitigation Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

**SUPPLEMENTARY INFORMATION:** In accordance with § 1360(i) of the National Flood Insurance Reform Act of 1968, as amended, 42 U.S.C. 4101(i), this notice is provided to notify interested parties of changes made National Flood Insurance Program Flood Maps. The listing shows communities affected by map changes, the flood map panel(s) affected, the effective date of the map change and, if applicable, a case number assigned to the map change action. Future notices of map changes will be published every six (6) months.

Dated: February 2, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

FEDERAL EMERGENCY MANAGEMENT AGENCY—COMPENDIUM OF FLOOD MAP CHANGES

[Map Revisions Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date |
|---|---|---|---|---|
| 01 | MASSACHUSETTS | MATTAPOISETT, TOWN OF | 2552140000 | 12/15/94 |
| 01 | MASSACHUSETTS | MATTAPOISETT, TOWN OF | 2552140010F | 12/15/94 |
| 02 | NEW YORK | HAMBURG, TOWN OF | 3602440000 | 10/04/94 |
| 02 | NEW YORK | HAMBURG, TOWN OF | 3602440010C | 10/04/94 |
| 04 | FLORIDA | ST. PETERSBURG, CITY OF | 1251480000 | 11/02/94 |
| 04 | FLORIDA | ST. PETERSBURG, CITY OF | 1251480020C | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0080D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0081D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0082D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0075D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0086D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0083D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0090D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0070D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0088D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0084D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0045D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0055D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0015D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0020D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0005D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0010D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0025D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0000 | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0030D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0040D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0095D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0038D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0039D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0050D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0035D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0115D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0100D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0175D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0155D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0180D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0150D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0110D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0170D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0145D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0140D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0120D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0125D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0130D | 11/02/94 |
| 04 | NORTH CAROLINA | CABARRUS COUNTY * | 37025C0135D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0088D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0086D | 11/02/94 |

FEDERAL EMERGENCY MANAGEMENT AGENCY—COMPENDIUM OF FLOOD MAP CHANGES—Continued

[Map Revisions Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date |
|---|---|---|---|---|
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0110D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0125D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0084D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0120D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0115D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0035D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0083D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0038D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0000 | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0039D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0040D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0081D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0075D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0082D | 11/02/94 |
| 04 | NORTH CAROLINA | CONCORD, CITY OF | 37025C0080D | 11/02/94 |
| 04 | NORTH CAROLINA | HARRISBURG, TOWN OF | 37025C0115D | 11/02/94 |
| 04 | NORTH CAROLINA | HARRISBURG, TOWN OF | 37025C0000 | 11/02/94 |
| 04 | NORTH CAROLINA | HARRISBURG, TOWN OF | 37025C0140D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0038D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0040D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0075D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0000 | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0080D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0039D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0035D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0030D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0020D | 11/02/94 |
| 04 | NORTH CAROLINA | KANNAPOLIS, CITY OF | 37025C0015D | 11/02/94 |
| 04 | NORTH CAROLINA | MOUNT PLEASANT, TOWN OF | 37025C0100D | 11/02/94 |
| 04 | NORTH CAROLINA | MOUNT PLEASANT, TOWN OF | 37025C0000 | 11/02/94 |
| 04 | NORTH CAROLINA | MOUNT PLEASANT, TOWN OF | 37025C0095D | 11/02/94 |
| 04 | NORTH CAROLINA | WASHINGTON COUNTY* | 3702470135C | 11/02/94 |
| 04 | NORTH CAROLINA | WASHINGTON COUNTY* | 3702470000 | 11/02/94 |
| 04 | NORTH CAROLINA | WASHINGTON COUNTY* | 3702470040C | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020010C | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020000 | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020110C | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020205C | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020115C | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020020C | 11/02/94 |
| 04 | SOUTH CAROLINA | AIKEN COUNTY* | 4500020105C | 11/02/94 |
| 04 | TENNESSEE | ARLINGTON, TOWNSHIP OF | 47157C0115E | 12/02/94 |
| 04 | TENNESSEE | ARLINGTON, TOWNSHIP OF | 47157C0075E | 12/02/94 |
| 04 | TENNESSEE | ARLINGTON, TOWNSHIP OF | 47157C0120E | 12/02/94 |
| 04 | TENNESSEE | BARTLETT, CITY OF | 47157C0105E | 12/02/94 |
| 04 | TENNESSEE | BARTLETT, CITY OF | 47157C0140E | 12/02/94 |
| 04 | TENNESSEE | BARTLETT, CITY OF | 47157C0150E | 12/02/94 |
| 04 | TENNESSEE | BARTLETT, CITY OF | 47157C0145E | 12/02/94 |
| 04 | TENNESSEE | BARTLETT, CITY OF | 47157C0185E | 12/02/94 |
| 04 | TENNESSEE | COLLIERVILLE, CITY OF | 47157C0295E | 12/02/94 |
| 04 | TENNESSEE | COLLIERVILLE, CITY OF | 47157C0300E | 12/02/94 |
| 04 | TENNESSEE | COLLIERVILLE, CITY OF | 47157C0245E | 12/02/94 |
| 04 | TENNESSEE | COLLIERVILLE, CITY OF | 47157C0240E | 12/02/94 |
| 04 | TENNESSEE | GERMANTOWN, CITY OF | 47157C0240E | 12/02/94 |
| 04 | TENNESSEE | GERMANTOWN, CITY OF | 47157C0295E | 12/02/94 |
| 04 | TENNESSEE | GERMANTOWN, CITY OF | 47157C0235E | 12/02/94 |
| 04 | TENNESSEE | GERMANTOWN, CITY OF | 47157C0230E | 12/02/94 |
| 04 | TENNESSEE | LAKELAND, CITY OF | 47157C0110E | 12/02/94 |
| 04 | TENNESSEE | LAKELAND, CITY OF | 47157C0115E | 12/02/94 |
| 04 | TENNESSEE | LAKELAND, CITY OF | 47157C0150E | 12/02/94 |
| 04 | TENNESSEE | LAKELAND, CITY OF | 47157C0155E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0145E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0090E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0185E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0190E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0205E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0210E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0215E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0095E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0170E | 12/02/94 |

FEDERAL EMERGENCY MANAGEMENT AGENCY—COMPENDIUM OF FLOOD MAP CHANGES—Continued

[Map Revisions Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date |
|---|---|---|---|---|
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0180E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0175E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0165E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0140E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0100E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0265E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0260E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0270E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0255E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0275e | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0250E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0225E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0220E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0230E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0280E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0235E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0285E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0130E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0135E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0195E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0125E | 12/02/94 |
| 04 | TENNESSEE | MEMPHIS, CITY OF | 47157C0290E | 12/02/94 |
| 04 | TENNESSEE | MILLINGTON, CITY OF | 47157C0060E | 12/02/94 |
| 04 | TENNESSEE | MILLINGTON, CITY OF | 47157C0100E | 12/02/94 |
| 04 | TENNESSEE | MILLINGTON, CITY OF | 47157C0055E | 12/02/94 |
| 04 | TENNESSEE | MILLINGTON, CITY OF | 47157C0050E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0130E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0140E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0065E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0040E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0035E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0045E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0030E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0050E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0025E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0010E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0005E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0015E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0055E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0020E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0070E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0060E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0110E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0105E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0115E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0100E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0120E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0095E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0080E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0075E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0085E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0125E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0090E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0230E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0275E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0245E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0280E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0290E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0285E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0300E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0295E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0240E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0235E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0150E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0145E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0155E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0160E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0185E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0200E | 12/02/94 |
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0195E | 12/02/94 |

FEDERAL EMERGENCY MANAGEMENT AGENCY—COMPENDIUM OF FLOOD MAP CHANGES—Continued

[Map Revisions Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date |
|---|---|---|---|---|
| 04 | TENNESSEE | SHELBY COUNTY * | 47157C0190E | 12/02/94 |
| 05 | ILLINOIS | GRUNDY COUNTY * | 1702560020D | 12/15/94 |
| 05 | ILLINOIS | GRUNDY COUNTY * | 1702560000 | 12/15/94 |
| 05 | INDIANA | BLACKFORD COUNTY* | 1804789999B | 11/01/94 |
| 05 | INDIANA | BLACKFORD COUNTY* | 1804780003B | 11/01/94 |
| 05 | INDIANA | BLACKFORD COUNTY* | 1804780004B | 11/01/94 |
| 05 | INDIANA | BLACKFORD COUNTY* | 1804780002B | 11/01/94 |
| 05 | INDIANA | BLACKFORD COUNTY* | 1804780001B | 11/01/94 |
| 05 | INDIANA | BLACKFORD COUNTY* | 1804780000 | 11/01/94 |
| 05 | INDIANA | ELLETSVILLE, TOWN OF | 180170C | 10/04/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550010C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550009C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550011C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550014C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550008C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550013C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550012C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550000 | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550007C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550001C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550006C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550002C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550003C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550005C | 10/18/94 |
| 05 | INDIANA | JASPER, CITY OF | 1800550004C | 10/18/94 |
| 05 | MICHIGAN | MARQUETTE, CITY OF | 2607160025B | 12/02/94 |
| 05 | MINNESOTA | ARGYLE, CITY OF | 2702680001C | 10/18/94 |
| 05 | MINNESOTA | PRESTON, CITY OF | 2701290001D | 11/02/94 |
| 05 | MINNESOTA | ST. CLOUD, CITY OF | 2704560010C | 11/16/94 |
| 05 | MINNESOTA | ST. CLOUD, CITY OF | 2704560015C | 11/16/94 |
| 05 | MINNESOTA | ST. CLOUD, CITY OF | 2704560000 | 11/16/94 |
| 05 | MINNESOTA | ST. CLOUD, CITY OF | 2704560005C | 11/16/94 |
| 05 | MINNESOTA | STEARNS COUNTY* | 2705460185B | 11/16/94 |
| 05 | MINNESOTA | STEARNS COUNTY* | 2705460195B | 11/16/94 |
| 05 | MINNESOTA | STEARNS COUNTY* | 2705460190B | 11/16/94 |
| 05 | MINNESOTA | STEARNS COUNTY* | 2705460000 | 11/16/94 |
| 05 | MINNESOTA | WAITE PARK, CITY OF | 2704610005D | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650025C | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650055D | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650045C | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650050D | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650070D | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650000 | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650095D | 11/16/94 |
| 05 | OHIO | CLERMONT COUNTY * | 3900650075D | 11/16/94 |
| 05 | OHIO | MILFORD, VILLAGE OF | 3902270005D | 11/16/94 |
| 05 | OHIO | SOUTH LEBANON, VILLAGE OF | 3905630005C | 10/18/94 |
| 06 | ARKANSAS | MAUMELLE, CITY OF | 0505770002A | 11/02/94 |
| 06 | ARKANSAS | MAUMELLE, CITY OF | 0505770000 | 11/02/94 |
| 06 | ARKANSAS | MAUMELLE, CITY OF | 0505770001A | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790258E | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790259E | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790310D | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790256E | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790257D | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790000 | 11/02/94 |
| 06 | ARKANSAS | PULASKI COUNTY * | 0501790120D | 11/02/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460025C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460300C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460290C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460295C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460310C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460325C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460320C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460400C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460350C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460375C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460275C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460250C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460075C | 12/15/94 |

FEDERAL EMERGENCY MANAGEMENT AGENCY—COMPENDIUM OF FLOOD MAP CHANGES—Continued

[Map Revisions Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date |
|---|---|---|---|---|
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460000 | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460050C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460125C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460175C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460150C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460225C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460195C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460200C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460425C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460100C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460625C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460610C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460620C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460650C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460655C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460440C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460660C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460665C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460600C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460670C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460500C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460450C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460475C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460575C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460515C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460550C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460545C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460525C | 12/15/94 |
| 06 | OKLAHOMA | OSAGE COUNTY* | 4001460535C | 12/15/94 |
| 06 | TEXAS | VAN HORN, TOWN OF | 4801630000 | 11/02/94 |
| 06 | TEXAS | VAN HORN, TOWN OF | 4801630003C | 11/02/94 |
| 06 | TEXAS | VAN HORN, TOWN OF | 4801630005C | 11/02/94 |
| 08 | COLORADO | COLORADO SPRINGS, CITY OF | 0800600000 | 11/02/94 |
| 08 | COLORADO | COLORADO SPRINGS, CITY OF | 0800600287E | 11/02/94 |
| 08 | COLORADO | FRISCO, TOWN OF | 0802450001C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900235C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900120C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900201C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900195C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900185C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900192C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900119C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900118C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900137C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900184C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900140C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900182C | 11/02/94 |
| 08 | COLORADO | SUMMIT COUNTY * | 0802900000 | 11/02/94 |
| 08 | UTAH | UTAH COUNTY * | 4955170503B | 12/15/94 |
| 08 | UTAH | UTAH COUNTY * | 4955170000 | 12/15/94 |
| 10 | OREGON | EUGENE, CITY OF | 4101220004C | 10/18/94 |
| 10 | OREGON | EUGENE, CITY OF | 4101220000 | 10/18/94 |
| 10 | OREGON | EUGENE, CITY OF | 4101220005C | 10/18/94 |

*Unicorporated areas only.

LETTERS OF MAP CHANGE

[Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 01 | CT | FAIRFIELD, TOWN OF | 0900070007B | 12/13/94 | 95–01–032A | 02 |
| 01 | CT | MADISON, TOWN OF | 0900790013C | 12/22/94 | 95–01–008P | 05 |
| 01 | CT | NEW BRITAIN, CITY OF | 0900320004B | 12/07/94 | 95–01–001P | 05 |
| 01 | CT | STAMFORD, CITY OF | 0900150006C | 11/10/94 | 94–01–031P | 06 |
| 01 | CT | STAMFORD, CITY OF | 0900150006C | 12/12/94 | 94–01–066A | 02 |
| 01 | MA | FRAMINGHAM, TOWN OF | 2501930005C | 11/11/94 | 94–01–037P | 06 |
| 01 | MA | REHOBOTH, TOWN OF | 2500620001A | 12/23/94 | 95–01–028A | 02 |
| 01 | ME | ACTON, TOWN OF | 2301900001B | 12/01/94 | 95–01–034A | 02 |

LETTERS OF MAP CHANGE—Continued

[Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 01 | ME | BRISTOL, TOWN OF | 2302150015B | 12/28/94 | 95–01–014A | 17 |
| 01 | ME | CAPE ELIZABETH, TOWN OF | 2300430008C | 12/09/94 | 95–01–002A | 01 |
| 01 | ME | DEDHAM, TOWN OF | 230279 | 11/17/94 | 95–01–010A | 02 |
| 01 | ME | FRENCHVILLE, TOWN OF | 230165 B | 11/17/94 | 94–01–068A | 01 |
| 01 | ME | ORONO, TOWN OF | 2301130010B | 10/20/94 | 94–01–064A | 02 |
| 01 | ME | SCARBOROUGH, TOWN OF | 2300520022D | 12/14/94 | 95–01–004A | 02 |
| 01 | ME | STONINGTON, TOWN OF | 2302940010C | 10/24/94 | 94–01–074A | 01 |
| 02 | NJ | ATLANTIC CITY, CITY OF | 3452780005D | 11/14/94 | 94–02–142A | 01 |
| 02 | NJ | CLIFTON, CITY OF | 3403980001B | 10/31/94 | 94–02–121P | 06 |
| 02 | NJ | EDISON, TOWNSHIP OF | 3402610003C | 12/09/94 | 94–02–132A | 01 |
| 02 | NJ | HOLMDEL, TOWNSHIP OF | 3403000001C | 12/09/94 | 95–02–004A | 02 |
| 02 | NJ | JERSEY CITY, CITY OF | 3402230004B | 10/24/94 | 94–02–032A | 01 |
| 02 | NJ | RAMSEY, BOROUGH OF | 3400640001C | 10/31/94 | 94–02–026A | 01 |
| 02 | NJ | RANDOLPH, TOWNSHIP OF | 3403580010D | 12/21/94 | 95–02–020A | 02 |
| 02 | NJ | RIVER VALE, TOWNSHIP OF | 3400690002B | 10/20/94 | 94–02–104A | 01 |
| 02 | NJ | WEST WINDSOR, TOWNSHIP OF | 3402560004C | 10/04/94 | 94–02–092A | 01 |
| 02 | NY | COHOES, CITY OF | 3600060005B | 11/22/94 | 94–02–138C | 01 |
| 02 | NY | NEW YORK, CITY OF | 3604970128D | 10/14/94 | 94–02–090A | 02 |
| 02 | PR | PUERTO RICO, COMMONWEALTH OF | 7200000047D | 10/17/94 | 94–02–126A | 01 |
| 02 | PR | PUERTO RICO, COMMONWEALTH OF | 7200000111C | 12/13/94 | 95–02–022A | 01 |
| 03 | DE | FENWICK ISLAND, TOWN OF | 1050840001D | 10/14/94 | 94–03–318A | 01 |
| 03 | MD | ANNE ARUNDEL COUNTY * | 2400080018C | 10/13/94 | 94–03–316A | 02 |
| 03 | MD | BALTIMORE COUNTY* | 2400100390B | 11/22/94 | 95–03–052A | 17 |
| 03 | MD | ELKTON, TOWN OF | 2400220003C | 12/22/94 | 95–03–050A | 02 |
| 03 | MD | GARRETT COUNTY * | 2400340100B | 11/23/94 | 94–03–302A | 02 |
| 03 | MD | TALBOT COUNTY * | 2400660029A | 11/16/94 | 94–03–210A | 02 |
| 03 | PA | ALTOONA, CITY OF | 4201590002B | 11/17/94 | 95–03–006A | 02 |
| 03 | PA | BRISTOL, TOWNSHIP OF | 4209840010D | 12/20/94 | 94–03–151P | 08 |
| 03 | PA | CHESTER, TOWNSHIP OF | 42045C0057D | 10/27/94 | 94–03–145P | 06 |
| 03 | PA | DOUGLASS, TOWNSHIP OF | 4219110010A | 10/07/94 | 94–03–079P | 06 |
| 03 | PA | LOWER MIFFLIN, TOWNSHIP OF | 4215820005B | 11/17/94 | 95–03–026A | 02 |
| 03 | PA | MATAMORAS, BOROUGH OF | 4207580005A | 11/17/94 | 95–03–016A | 02 |
| 03 | PA | NEW BRITAIN, TOWNSHIP OF | 4209870005C | 11/18/94 | 94–03–076A | 01 |
| 03 | PA | WYOMISSING, BOROUGH OF | 4213750002A | 12/12/94 | 94–03–041P | 05 |
| 03 | VA | ALEXANDRIA, CITY OF | 5155190005D | 11/01/94 | 95–03–002A | 02 |
| 03 | VA | CHESAPEAKE, CITY OF | 510034 B | 12/30/94 | 95–03–062A | 01 |
| 03 | VA | FAIRFAX COUNTY * | 5155250025D | 10/13/94 | 94–03–312A | 02 |
| 03 | VA | FAIRFAX COUNTY * | 5155250050D | 11/17/94 | 94–03–322A | 02 |
| 03 | VA | FAIRFAX COUNTY * | 5155250079D | 10/12/94 | 94–03–286A | 01 |
| 03 | VA | FAIRFAX COUNTY * | 5155250100D | 10/11/94 | 94–03–290A | 02 |
| 03 | VA | FAIRFAX COUNTY * | 5155250100D | 10/13/94 | 94–03–310A | 02 |
| 03 | VA | KING & QUEEN COUNTY * | 5100820100A | 11/29/94 | 95–03–040A | 02 |
| 03 | VA | SHENANDOAH COUNTY * | 5101470175B | 10/26/94 | 94–03–131P | 06 |
| 03 | VA | VIRGINIA BEACH, CITY OF | 5155310029D | 12/09/94 | 94–03–298A | 01 |
| 03 | VA | VIRGINIA BEACH, CITY OF | 5155310029D | 12/08/94 | 95–03–024A | 02 |
| 03 | VA | VIRGINIA BEACH, CITY OF | 5155310033D | 12/22/94 | 95–03–008A | 02 |
| 03 | VA | VIRGINIA BEACH, CITY OF | 5155310034D | 12/08/94 | 94–03–326A | 02 |
| 03 | WV | BOONE COUNTY * | 54005C0070B | 11/08/94 | 94–03–202A | 02 |
| 03 | WV | HUNTINGTON, CITY OF | 5400180006C | 10/04/94 | 94–03–320A | 02 |
| 03 | WV | PARKERSBURG, CITY OF | 5402140002B | 12/28/94 | 94–03–330A | 02 |
| 04 | AL | DECATUR, CITY OF | 0101760015B | 11/08/94 | 95–04–048A | 01 |
| 04 | AL | LANETT, CITY OF | 0100290010B | 10/14/94 | 944–179 | 02 |
| 04 | AL | MONTGOMERY COUNTY * | 01101C0200F | 11/08/94 | 951–016 | 02 |
| 04 | AL | MONTGOMERY, CITY OF | 01101C0065F | 11/21/94 | 951–077 | 02 |
| 04 | AL | MONTGOMERY, CITY OF | 01101C0070F | 11/09/94 | 951–047 | 02 |
| 04 | AL | MONTGOMERY, CITY OF | 01101C0070F | 11/09/94 | 951–048 | 02 |
| 04 | AL | TUSCALOOSA, CITY OF | 0102030025A | 11/16/94 | 93–04–301P | 05 |
| 04 | AL | TUSCALOOSA, CITY OF | 0102030045A | 11/16/94 | 93–04–301P | 05 |
| 04 | AL | WETUMPKA, CITY OF | 0100700005B | 12/09/94 | 95–04–058A | 01 |
| 04 | FL | ALACHUA COUNTY* | 1200010259A | 11/21/94 | 951–054 | 02 |
| 04 | FL | BAY COUNTY* | 1200040351D | 10/19/94 | 934–036 | 01 |
| 04 | FL | BAY COUNTY* | 1200040351D | 10/14/94 | 944–004 | 01 |
| 04 | FL | BRADFORD COUNTY * | 12007C0245D | 10/31/94 | 944–214 | 02 |
| 04 | FL | BREVARD COUNTY * | 12009C0115E | 10/14/94 | 944–170 | 02 |
| 04 | FL | BREVARD COUNTY * | 12009C0270E | 10/14/94 | 881–032 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0275E | 11/01/94 | 944–186 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0275E | 12/15/94 | 951–062 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0365E | 11/01/94 | 944–192 | 02 |
| 04 | FL | BREVARD COUNTY * | 12009C0365E | 11/01/94 | 944–206 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0365E | 12/15/94 | 951–108 | 01 |

LETTERS OF MAP CHANGE—Continued

[Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 04 | FL | BREVARD COUNTY * | 12009C0365E | 12/15/94 | 951–138 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0430E | 10/11/94 | 944–031 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0430E | 10/14/94 | 944–119 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0430E | 12/16/94 | 95–04–050A | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0435E | 10/14/94 | 944–073 | 02 |
| 04 | FL | BREVARD COUNTY * | 12009C0435E | 10/14/94 | 944–131 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0435E | 10/14/94 | 944–181 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0435E | 10/14/94 | 944–184 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0435E | 10/14/94 | 944–203 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0435E | 11/09/94 | 951–028 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0440E | 10/14/94 | 944–083 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0441E | 11/09/94 | 943–159 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0441E | 11/09/94 | 943–160 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0441E | 11/09/94 | 944–001 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0441E | 11/09/94 | 944–081 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0441E | 10/12/94 | 944–093 | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0607F | 10/25/94 | 94–04–792A | 01 |
| 04 | FL | BREVARD COUNTY * | 12009C0607F | 11/10/94 | 95–04–078A | 01 |
| 04 | FL | BROWARD COUNTY* | 12011C0190F | 12/14/94 | 95–04–204A | 01 |
| 04 | FL | BROWARD COUNTY* | 12011C0285F | 12/21/94 | 95–04–172A | 01 |
| 04 | FL | CAPE CORAL, CITY OF | 1250950030C | 11/14/94 | 94–04–818A | 01 |
| 04 | FL | CAPE CORAL, CITY OF | 1250950030C | 12/05/94 | 95–04–112A | 01 |
| 04 | FL | CAPE CORAL, CITY OF | 1250950040C | 12/05/94 | 95–04–112A | 01 |
| 04 | FL | CASSELBERRY, CITY OF | 1202910005C | 11/01/94 | 951–015 | 01 |
| 04 | FL | CASSELBERRY, CITY OF | 1202910005C | 12/15/94 | 951–092 | 02 |
| 04 | FL | CASSELBERRY, CITY OF | 1202910005C | 12/15/94 | 951–103 | 01 |
| 04 | FL | CHARLOTTE COUNTY * | 1200610014D | 11/17/94 | 943–201 | 02 |
| 04 | FL | CITRUS COUNTY * | 1200630115B | 11/01/94 | 951–033 | 02 |
| 04 | FL | CITRUS COUNTY * | 1200630220B | 10/04/94 | 94–04–826A | 02 |
| 04 | FL | CITRUS COUNTY * | 1200630220B | 12/13/94 | 951–110 | 02 |
| 04 | FL | CITRUS COUNTY * | 1200630260B | 10/31/94 | 944–221 | 02 |
| 04 | FL | CLAY COUNTY * | 1200640140D | 11/08/94 | 951–037 | 02 |
| 04 | FL | COCONUT CREEK, CITY OF | 12011C0115F | 11/21/94 | 951–073 | 01 |
| 04 | FL | COLLIER COUNTY * | 1200670581E | 10/21/94 | 94–04–285P | 05 |
| 04 | FL | COLLIER COUNTY * | 1200670582E | 10/21/94 | 94–04–285P | 05 |
| 04 | FL | COLLIER COUNTY * | 1200670605E | 12/13/94 | 951–125 | 01 |
| 04 | FL | CORAL SPRINGS, CITY OF | 12011C0095F | 12/13/94 | 944–096 | 02 |
| 04 | FL | CORAL SPRINGS, CITY OF | 12011C0115F | 10/26/94 | 94–04–958A | 01 |
| 04 | FL | DADE COUNTY* | 12025C0075J | 10/20/94 | 874–017 | 02 |
| 04 | FL | DADE COUNTY* | 12025C0170J | 10/19/94 | 95–04–070A | 01 |
| 04 | FL | DADE COUNTY* | 12025C0265J | 10/12/94 | 94–04–906A | 01 |
| 04 | FL | DADE COUNTY* | 12025C0265J | 11/28/94 | 95–04–022A | 02 |
| 04 | FL | DADE COUNTY* | 12025C0265J | 12/06/94 | 95–04–150A | 01 |
| 04 | FL | DADE COUNTY* | 12025C0265J | 12/14/94 | 951–141 | 02 |
| 04 | FL | DADE COUNTY* | 12025C0265J | 12/14/94 | 951–142 | 01 |
| 04 | FL | DADE COUNTY* | 12025C0265J | 12/14/94 | 951–147 | 01 |
| 04 | FL | DAYTONA BEACH, CITY OF | 1250990010D | 12/28/94 | 95–04–164A | 01 |
| 04 | FL | FORT WALTON BEACH, CITY OF | 1201740005B | 11/09/94 | 951–051 | 01 |
| 04 | FL | HERNANDO COUNTY * | 1201100140B | 10/12/94 | 943–254 | 02 |
| 04 | FL | HERNANDO COUNTY * | 1201100150B | 11/08/94 | 94–04–870A | 02 |
| 04 | FL | HIALEAH GARDENS, CITY OF | 12025C0075J | 12/21/94 | 95–04–212A | 01 |
| 04 | FL | HIALEAH, CITY OF | 12025C0075J | 10/19/94 | 94–04–914A | 01 |
| 04 | FL | HIALEAH, CITY OF | 12025C0075J | 11/29/94 | 95–04–126A | 01 |
| 04 | FL | HIALEAH, CITY OF | 12025C0075J | 11/29/94 | 95–04–144A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120045D | 11/29/94 | 951–104 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120065D | 12/15/94 | 951–099 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120070E | 12/15/94 | 951–121 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120160C | 11/01/94 | 94–04–978C | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120160C | 11/09/94 | 951–036 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 10/18/94 | 94–04–894A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 10/18/94 | 94–04–920A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 10/12/94 | 944–154 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 10/20/94 | 951–007 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 10/20/94 | 951–008 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/01/94 | 951–022 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/01/94 | 951–023 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/08/94 | 951–038 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/08/94 | 951–053 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/09/94 | 951–055 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/21/94 | 951–070 | 01 |

LETTERS OF MAP CHANGE—Continued

[Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/21/94 | 951–079 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 11/17/94 | 951–080 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120167C | 12/13/94 | 951–130 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120180F | 10/12/94 | 944–151 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120185F | 11/09/94 | 951–031 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120192D | 12/01/94 | 943–234 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120195D | 11/17/94 | 944–122 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120205D | 12/14/94 | 944–069 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120205D | 10/31/94 | 944–210 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120205D | 12/14/94 | 95–04–196A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120210E | 10/20/94 | 944–228 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120210E | 11/29/94 | 951–101 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120380E | 10/31/94 | 944–227 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120385E | 10/14/94 | 944–156 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120385E | 10/12/94 | 944–165 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120385E | 10/31/94 | 944–227 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120387E | 10/12/94 | 944–158 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120387E | 12/01/94 | 951–085 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120389D | 12/01/94 | 951–085 | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120395E | 10/31/94 | 942–186 | 02 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120425C | 12/09/94 | 95–04–176A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120494C | 10/25/94 | 94–04–974A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120494C | 12/07/94 | 95–04–200A | 01 |
| 04 | FL | HILLSBOROUGH COUNTY* | 1201120507C | 11/21/94 | 951–097 | 02 |
| 04 | FL | INDIAN RIVER COUNTY* | 12061C0070E | 12/13/94 | 951–120 | 01 |
| 04 | FL | JACKSONVILLE, CITY OF | 1200770237E | 11/01/94 | 94–04–233P | 06 |
| 04 | FL | LAKE COUNTY* | 1204210100B | 11/03/94 | 94–04–968A | 02 |
| 04 | FL | LAKE COUNTY* | 1204210125B | 11/21/94 | 951–069 | 02 |
| 04 | FL | LAKE COUNTY* | 12104210225B | 11/21/94 | 944–160 | 02 |
| 04 | FL | LAKE COUNTY* | 12104210225B | 12/15/94 | 944–196 | 01 |
| 04 | FL | LAKE COUNTY* | 12104210225B | 11/21/94 | 944–197 | 01 |
| 04 | FL | LAKE COUNTY* | 12104210225B | 11/21/94 | 944–198 | 01 |
| 04 | FL | LAKE COUNTY* | 12104210225B | 11/17/94 | 951–067 | 02 |
| 04 | FL | LAKE COUNTY* | 12104210375B | 11/09/94 | 951–034 | 02 |
| 04 | FL | LEE COUNTY* | 1251240225C | 10/13/94 | 94–04–972A | 01 |
| 04 | FL | LEE COUNTY* | 1251240225C | 11/17/94 | 95–04–094A | 01 |
| 04 | FL | LEE COUNTY* | 1251240225C | 11/17/94 | 95–04–106A | 01 |
| 04 | FL | LEE COUNTY* | 1251240225C | 12/19/94 | 95–04–162A | 01 |
| 04 | FL | LEE COUNTY* | 1251240225C | 11/21/94 | 951–094 | 02 |
| 04 | FL | LEE COUNTY* | 1251240250B | 10/19/94 | 94–04–950A | 02 |
| 04 | FL | LEE COUNTY* | 1251240250B | 11/21/94 | 951–093 | 02 |
| 04 | FL | LEON COUNTY* | 1201430090A | 10/31/94 | 944–213 | 02 |
| 04 | FL | LEON COUNTY* | 1201430150A | 12/14/94 | 951–089 | 02 |
| 04 | FL | LONGWOOD, CITY OF | 1202920001B | 12/15/94 | 944–161 | 02 |
| 04 | FL | MANATEE COUNTY* | 1201530329C | 10/14/94 | 94–04–930A | 02 |
| 04 | FL | MELBOURNE, CITY OF | 12009C0441E | 10/11/94 | 944–039 | 02 |
| 04 | FL | MELBOURNE, CITY OF | 12009C0441E | 11/21/94 | 944–046 | 01 |
| 04 | FL | MELBOURNE, CITY OF | 12009C0441E | 10/11/94 | 944–062 | 02 |
| 04 | FL | MELBOURNE, CITY OF | 12009C0441E | 11/21/94 | 944–114 | 02 |
| 04 | FL | MELBOURNE, CITY OF | 12009C0441E | 11/01/94 | 944–193 | 02 |
| 04 | FL | MELBOURNE, CITY OF | 12009C0441E | 11/21/94 | 944–211 | 01 |
| 04 | FL | MINNEOLA, TOWN OF | 1204120001A | 10/06/94 | 944–150 | 02 |
| 04 | FL | MINNEOLA, TOWN OF | 1204120001A | 10/06/94 | 944–152 | 02 |
| 04 | FL | MINNEOLA, TOWN OF | 1204120001A | 10/17/94 | 944–185 | 02 |
| 04 | FL | MIRAMAR, CITY OF | 12011C0315F | 10/20/94 | 94–04–948A | 02 |
| 04 | FL | MIRAMAR, CITY OF | 12011C0315F | 11/29/94 | 95–04–060A | 01 |
| 04 | FL | OKALOOSA COUNTY* | 1201730210D | 11/09/94 | 944–115 | 02 |
| 04 | FL | OKALOOSA COUNTY* | 1201730230D | 11/01/94 | 951–024 | 01 |
| 04 | FL | OKEECHOBEE COUNTY* | 1201770230B | 11/09/94 | 951–052 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790125D | 10/25/94 | 95–04–026A | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790200D | 12/13/94 | 951–126 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790225C | 10/14/94 | 943–211 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790225C | 10/14/94 | 944–078 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790225C | 11/21/94 | 951–065 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 11/10/94 | 94–04–846P | 06 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 10/25/94 | 94–04–952A | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 11/01/94 | 943–265 | 02 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 10/14/94 | 944–175 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 10/14/94 | 944–176 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 10/27/94 | 95–04–024A | 01 |

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|---|---|---|---|---|---|---|
| 04 | FL | ORANGE COUNTY* | 1201790250D | 11/10/94 | 95–04–086A | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790250D | 11/01/94 | 951–014 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790350C | 11/14/94 | 943–235 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 10/04/94 | 94–04–916A | 02 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 11/17/94 | 944–008 | 02 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 10/14/94 | 944–042 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 10/19/94 | 944–142 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 11/08/94 | 944–202 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 11/01/94 | 944–208 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790375D | 11/08/94 | 951–039 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790400C | 10/20/94 | 94–04–956A | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790400C | 11/17/94 | 943–245 | 02 |
| 04 | FL | ORANGE COUNTY* | 1201790400C | 10/19/94 | 943–261 | 01 |
| 04 | FL | ORANGE COUNTY* | 1201790525B | 12/28/94 | 95–04–180A | 01 |
| 04 | FL | OSCEOLA COUNTY* | 1201890045B | 12/16/94 | 95–04–032A | 01 |
| 04 | FL | PALM BEACH COUNTY* | 1201920102B | 11/08/94 | 951–043 | 02 |
| 04 | FL | PALM BEACH COUNTY* | 1201920130B | 11/09/94 | 944–144 | 02 |
| 04 | FL | PANAMA CITY BEACH, CITY OF | 1200130005C | 12/15/94 | 951–090 | 02 |
| 04 | FL | PASCO COUNTY* | 1202300195D | 10/31/94 | 944–216 | 02 |
| 04 | FL | PASCO COUNTY* | 1202300352C | 12/05/94 | 95–04–110A | 01 |
| 04 | FL | PASCO COUNTY* | 1202300352C | 12/15/94 | 951–105 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300360D | 12/19/94 | 95–04–160A | 01 |
| 04 | FL | PASCO COUNTY* | 1202300360D | 11/21/94 | 951–098 | 02 |
| 04 | FL | PASCO COUNTY* | 1202300360D | 12/15/94 | 951–139 | 02 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 12/07/94 | 94–04–830A | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 11/01/94 | 944–201 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 12/30/94 | 95–04–178A | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 10/20/94 | 951–003 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 10/20/94 | 951–004 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 10/20/94 | 951–005 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 12/01/94 | 951–078 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 12/13/94 | 951–123 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300370D | 12/13/94 | 951–124 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300410E | 12/30/94 | 95–04–234A | 01 |
| 04 | FL | PASCO COUNTY* | 1202300425E | 10/17/94 | 94–04–876A | 01 |
| 04 | FL | PASCO COUNTY* | 1202300425E | 11/21/94 | 944–195 | 02 |
| 04 | FL | PASCO COUNTY* | 1202300425E | 11/17/94 | 951–074 | 02 |
| 04 | FL | PASCO COUNTY* | 1202300450E | 10/12/94 | 944–153 | 01 |
| 04 | FL | PASCO COUNTY* | 1202300450E | 11/17/94 | 944–207 | 01 |
| 04 | FL | PEMBROKE PINES, CITY OF | 12011C0290F | 11/16/94 | 95–04–034A | 01 |
| 04 | FL | PEMBROKE PINES, CITY OF | 12011C0290F | 11/01/94 | 951–019 | 01 |
| 04 | FL | PEMBROKE PINES, CITY OF | 12011C0295F | 10/26/94 | 94–04–928A | 01 |
| 04 | FL | PEMBROKE PINES, CITY OF | 12011C0305F | 12/16/94 | 95–04–228A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390039C | 12/15/94 | 95–04–136A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390043C | 12/15/94 | 95–04–136A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390043C | 12/21/94 | 95–04–154A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390069C | 11/21/94 | 943–044 | 02 |
| 04 | FL | PINELLAS COUNTY* | 1251390077C | 12/06/94 | 95–04–120A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 10/14/94 | 94–04–896A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 10/25/94 | 95–04–010A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 10/27/94 | 95–04–042A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 10/27/94 | 95–04–044A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 11/29/94 | 95–04–080A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 12/21/94 | 95–04–156A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 12/28/94 | 95–04–190A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 12/30/94 | 95–04–230A | 01 |
| 04 | FL | PINELLAS COUNTY* | 1251390079C | 12/30/94 | 95–04–236A | 01 |
| 04 | FL | POLK COUNTY* | 1202610125B | 12/14/94 | 951–087 | 02 |
| 04 | FL | POLK COUNTY* | 1202610125B | 12/14/94 | 951–088 | 02 |
| 04 | FL | POLK COUNTY* | 1202610550E | 11/17/94 | 94–04–976A | 02 |
| 04 | FL | SARASOTA COUNTY* | 1251440141D | 10/20/94 | 94–04–305P | 06 |
| 04 | FL | SEMINOLE COUNTY* | 1202890110B | 11/01/94 | 944–204 | 02 |
| 04 | FL | SEMINOLE COUNTY* | 1202890145B | 11/09/94 | 943–263 | 02 |
| 04 | FL | STUART, CITY OF | 1201650005C | 11/23/94 | 94–04–932A | 01 |
| 04 | FL | TALLAHASSEE, CITY OF | 1201440005C | 11/17/94 | 943–178 | 02 |
| 04 | FL | TALLAHASSEE, CITY OF | 1201440005C | 11/17/94 | 943–179 | 02 |
| 04 | FL | TALLAHASSEE, CITY OF | 1201440005C | 11/17/94 | 943–190 | 02 |
| 04 | FL | TALLAHASSEE, CITY OF | 1201440010C | 11/01/94 | 951–030 | 02 |
| 04 | FL | TAMARAC, CITY OF | 12011C0185F | 10/21/94 | 94–04–964A | 01 |
| 04 | FL | TAMARAC, CITY OF | 12011C0185F | 11/08/94 | 95–04–006A | 01 |

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|---|---|---|---|---|---|---|
| 04 | FL | TAMARAC, CITY OF | 12011C0185F | 11/17/94 | 95–04–104A | 01 |
| 04 | FL | TAMARAC, CITY OF | 12011C0185F | 12/22/94 | 95–04–202A | 01 |
| 04 | FL | TAMARAC, CITY OF | 12011C0205F | 11/29/94 | 95–04–114A | 01 |
| 04 | FL | WALTON COUNTY* | 1203170330D | 11/21/94 | 951–068 | 02 |
| 04 | FL | WEST MELBOURNE, CITY OF | 12009C0504E | 11/16/94 | 95–04–030A | 17 |
| 04 | GA | ALBANY, CITY OF | 1300750015C | 10/13/94 | 94–04–315P | 06 |
| 04 | GA | ALBANY, CITY OF | 1300750015C | 10/12/94 | 943–246 | 02 |
| 04 | GA | ATLANTA, CITY OF | 1351570016C | 10/31/94 | 951–011 | 02 |
| 04 | GA | CARROLLTON, CITY OF | 1302080001B | 10/20/94 | 944–199 | 02 |
| 04 | GA | COBB COUNTY* | 13067C0030F | 11/29/94 | 94–04–249P | 05 |
| 04 | GA | COBB COUNTY* | 13067C0075F | 12/15/94 | 951–122 | 02 |
| 04 | GA | DALTON, CITY OF | 1301940010C | 10/12/94 | 943–188 | 02 |
| 04 | GA | DEKALB COUNTY* | 1300650009C | 11/01/94 | 944–173 | 02 |
| 04 | GA | FULTON COUNTY* | 1351600055C | 12/13/94 | 944–212 | 02 |
| 04 | GA | FULTON COUNTY* | 1351600080C | 11/17/94 | 942–113 | 02 |
| 04 | GA | FULTON COUNTY* | 1351600150C | 10/12/94 | 943–195 | 02 |
| 04 | GA | GWINNETT COUNTY* | 1303220160D | 12/15/94 | 951–029 | 02 |
| 04 | GA | THOMASVILLE, CITY OF | 1301700005C | 10/14/94 | 94–04–155P | 06 |
| 04 | GA | UNION COUNTY* | 1302540025C | 12/15/94 | 951–021 | 02 |
| 04 | GA | WOODSTOCK, CITY OF | 13057C0330B | 10/12/94 | 944–088 | 02 |
| 04 | KY | COVINGTON, CITY OF | 2101290005D | 12/15/94 | 951–134 | 02 |
| 04 | KY | JEFFERSON COUNTY* | 21111C0080D | 10/20/94 | 944–040 | 02 |
| 04 | KY | JEFFERSON COUNTY* | 21111C0115D | 12/22/94 | 951–082 | 02 |
| 04 | MS | DESOTO COUNTY* | 28033C0040D | 11/08/94 | 94–04–946A | 01 |
| 04 | MS | DESOTO COUNTY* | 28033C0045D | 12/22/94 | 95–04–039P | 06 |
| 04 | MS | GREENWOOD, CITY OF | 2801020005C | 11/01/94 | 944–077 | 02 |
| 04 | MS | HINDS COUNTY* | 2800700250D | 10/17/94 | 924–138 | 01 |
| 04 | MS | HINDS COUNTY* | 2800700300D | 11/21/94 | 944–145 | 02 |
| 04 | MS | LOWNDES COUNTY* | 2801930065D | 12/19/94 | 95–04–158A | 02 |
| 04 | MS | MADISON COUNTY* | 28089C0315D | 11/17/94 | 943–247 | 02 |
| 04 | MS | PEARL RIVER VALLEY WATER SUPPLY DISTRICT | 2803380055A | 10/11/94 | 944–086 | 01 |
| 04 | MS | PEARL RIVER VALLEY WATER SUPPLY DISTRICT | 2803380065A | 11/09/94 | 951–063 | 02 |
| 04 | MS | RICHLAND, CITY OF | 2802990002C | 10/13/94 | 94–04–121P | 06 |
| 04 | NC | CARY, TOWN OF | 37183C0293E | 12/22/94 | 951–146 | 02 |
| 04 | NC | CATAWBA COUNTY* | 3700500200B | 11/21/94 | 951–071 | 02 |
| 04 | NC | CATAWBA COUNTY* | 3700500350B | 12/15/94 | 944–141 | 02 |
| 04 | NC | CRAVEN COUNTY* | 3700720225B | 11/08/94 | 944–103 | 02 |
| 04 | NC | CRAVEN COUNTY* | 3700720330B | 11/08/94 | 943–238 | 02 |
| 04 | NC | GRANVILLE COUNTY* | 37077C0150C | 11/03/94 | 951–040 | 02 |
| 04 | NC | HAYWOOD COUNTY* | 3701200135B | 12/15/94 | 951–009 | 02 |
| 04 | NC | HAYWOOD COUNTY* | 3701200135B | 12/15/94 | 951–010 | 02 |
| 04 | NC | MECKLENBURG COUNTY* | 3701580015B | 12/13/94 | 951–118 | 02 |
| 04 | NC | MECKLENBURG COUNTY* | 3701580015B | 12/13/94 | 951–119 | 02 |
| 04 | NC | MECKLENBURG COUNTY* | 3701580145B | 11/21/94 | 951–091 | 02 |
| 04 | NC | NEW HANOVER COUNTY* | 3701680082E | 11/21/94 | 951–083 | 02 |
| 04 | NC | OLD FORT, TOWN OF | 37111C0135B | 11/23/94 | 94–04–223P | 05 |
| 04 | NC | ONSLOW COUNTY* | 3703400315C | 11/17/94 | 944–166 | 02 |
| 04 | NC | ONSLOW COUNTY* | 3703400315C | 12/15/94 | 951–112 | 02 |
| 04 | NC | ONSLOW COUNTY* | 3703400330C | 11/09/94 | 951–066 | 02 |
| 04 | NC | WILMINGTON, CITY OF | 3701710005C | 12/28/94 | 95–04–174A | 02 |
| 04 | SC | BERKELEY COUNTY* | 4500290290B | 11/29/94 | 943–158 | 02 |
| 04 | SC | DORCHESTER COUNTY* | 4500680245C | 11/01/94 | 944–217 | 02 |
| 04 | SC | DORCHESTER COUNTY* | 4500680245C | 11/01/94 | 944–218 | 02 |
| 04 | SC | DORCHESTER COUNTY* | 4500680265C | 11/08/94 | 951–041 | 02 |
| 04 | SC | GREENVILLE COUNTY* | 4500890165B | 11/29/94 | 951–100 | 02 |
| 04 | SC | HORRY COUNTY* | 45051C0253E | 11/01/94 | 942–107 | 02 |
| 04 | SC | RICHLAND COUNTY* | 45079C0025G | 10/31/94 | 944–146 | 02 |
| 04 | SC | RICHLAND COUNTY* | 45079C0025G | 11/09/94 | 951–042 | 02 |
| 04 | TN | CHEATHAM COUNTY* | 4700260165B | 12/22/94 | 951–018 | 02 |
| 04 | TN | CLARKSVILLE, CITY OF | 4701370005C | 11/21/94 | 951–076 | 02 |
| 04 | TN | EAST RIDGE, CITY OF | 4754240010D | 11/09/94 | 951–044 | 01 |
| 04 | TN | FRANKLIN, CITY OF | 4702060004D | 12/13/94 | 951–115 | 02 |
| 04 | TN | FRANKLIN, CITY OF | 4702060007D | 11/09/94 | 951–064 | 02 |
| 04 | TN | KNOXVILLE, CITY OF | 4754340030D | 10/20/94 | 944–219 | 02 |
| 04 | TN | LEWISBURG, CITY OF | 47117C0133C | 10/20/94 | 94–04–277R | 08 |
| 04 | TN | MONTGOMERY COUNTY* | 4701360050B | 11/29/94 | 951–102 | 02 |
| 04 | TN | MONTGOMERY COUNTY* | 4701360050B | 11/29/94 | 951–106 | 01 |
| 04 | TN | NASHVILLE, CITY OF & DAVIDSON COUNTY | 4700400177B | 10/14/94 | 94–04–970A | 01 |
| 04 | TN | NASHVILLE, CITY OF & DAVIDSON COUNTY | 4700400177B | 11/03/94 | 95–04–076A | 01 |
| 04 | TN | NASHVILLE, CITY OF & DAVIDSON COUNTY | 4700400177B | 12/28/94 | 95–04–186A | 01 |

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|---|---|---|---|---|---|---|
| 04 | TN | NASHVILLE, CITY OF & DAVIDSON COUNTY | 4700400179B | 11/09/94 | 951–050 | 02 |
| 04 | TN | OAK HILL, TOWN OF | 4703510001A | 11/14/94 | 944–134 | 02 |
| 04 | TN | RUTHERFORD COUNTY* | 4701650070B | 12/20/94 | 95–04–232A | 01 |
| 04 | TN | SMYRNA, TOWN OF | 4701690003D | 10/11/94 | 944–143 | 01 |
| 04 | TN | WILSON COUNTY* | 4702070040C | 11/11/94 | 95–04–056A | 01 |
| 04 | TN | WILSON COUNTY* | 4702070040C | 11/25/94 | 95–04–102A | 01 |
| 05 | IL | ADDISON, VILLAGE OF | 1701980005C | 11/14/94 | 94–05–1388A | 02 |
| 05 | IL | AMBOY, CITY OF | 17103C0115D | 12/07/94 | 95–05–200A | 02 |
| 05 | IL | BARRINGTON HILLS, VILLAGE OF | 1700580002B | 10/18/94 | | 02 |
| 05 | IL | BENSENVILLE, VILLAGE OF | 1702000003C | 12/12/94 | 95–05–370A | 01 |
| 05 | IL | BLOOMINGTON, CITY OF | 1704900010C | 10/18/94 | | 02 |
| 05 | IL | BLOOMINGTON, CITY OF | 1704900010C | 10/18/94 | | 02 |
| 05 | IL | BLOOMINGTON, CITY OF | 1704900010C | 10/18/94 | | 02 |
| 05 | IL | BLOOMINGTON, CITY OF | 1704900010C | 10/18/94 | | 02 |
| 05 | IL | BUFFALO GROVE, VILLAGE OF | 1700680003D | 11/08/94 | | 02 |
| 05 | IL | CHAMPAIGN COUNTY* | 1708940180B | 10/26/94 | 94–05–1352A | 01 |
| 05 | IL | COOK COUNTY* | 1700540035B | 12/19/94 | 95–05–296A | 01 |
| 05 | IL | COOK COUNTY* | 1700540195B | 11/11/94 | 94–05–050A | 01 |
| 05 | IL | COOK COUNTY* | 1700540215B | 12/15/94 | 95–05–188A | 01 |
| 05 | IL | DARIEN, CITY OF | 1707500001A | 12/05/94 | 94–05–1152A | 17 |
| 05 | IL | DARIEN, CITY OF | 1707500001A | 11/02/94 | 94–05–1384A | 02 |
| 05 | IL | DARIEN, CITY OF | 1707500003A | 12/05/94 | 94–05–1152A | 17 |
| 05 | IL | DUPAGE COUNTY* | 1701970040B | 10/19/94 | 94–05–1374A | 02 |
| 05 | IL | DUPAGE COUNTY* | 1701970060B | 10/07/94 | 94–05–1312A | 02 |
| 05 | IL | FLOSSMOOR, VILLAGE OF | 1700910002D | 11/17/94 | 95–05–014A | 02 |
| 05 | IL | GLENVIEW, VILLAGE OF | 1700960005B | 11/17/94 | 95–05–242A | 02 |
| 05 | IL | GRUNDY COUNTY* | 1702560100C | 12/16/94 | 95–05–178A | 02 |
| 05 | IL | HINSDALE, VILLAGE OF | 1701050002B | 12/21/94 | 95–05–488A | 02 |
| 05 | IL | HOLIDAY HILLS, VILLAGE OF | 1709360001B | 10/18/94 | | 02 |
| 05 | IL | ISLAND LAKE, VILLAGE OF | 1703700001B | 11/29/94 | 95–05–128A | 02 |
| 05 | IL | ISLAND LAKE, VILLAGE OF | 1703700001B | 12/08/94 | 95–05–216A | 02 |
| 05 | IL | LAKE COUNTY* | 1703570090B | 11/17/94 | 94–05–978P | 06 |
| 05 | IL | LAKE COUNTY* | 1703570110B | 11/02/94 | 95–05–092A | 02 |
| 05 | IL | LAKE COUNTY* | 1703570115B | 11/14/94 | 95–05–162A | 02 |
| 05 | IL | LINCOLNSHIRE, VILLAGE OF | 1703780005C | 10/19/94 | 94–05–1364A | 01 |
| 05 | IL | LISLE, VILLAGE OF | 1702110005B | 11/08/94 | | 02 |
| 05 | IL | LONG GROVE, VILLAGE OF | 1703800010C | 10/27/94 | 94–05–1332A | 01 |
| 05 | IL | MANHATTAN, VILLAGE OF | 1707040001B | 12/22/94 | 95–05–154A | 01 |
| 05 | IL | MARENGO, CITY OF | 1704820001B | 10/31/94 | 94–05–1378A | 01 |
| 05 | IL | MCHENRY COUNTY* | 1707320230B | 11/08/94 | | 02 |
| 05 | IL | MCHENRY COUNTY* | 1707320240B | 10/14/94 | 94–05–1306A | 02 |
| 05 | IL | MIDLOTHIAN, VILLAGE OF | 1701270001C | 12/12/94 | 95–05–138A | 02 |
| 05 | IL | NAPERVILLE, CITY OF | 1702130017C | 10/07/94 | 94–05–478A | 01 |
| 05 | IL | NAPERVILLE, CITY OF | 1702130017C | 12/28/94 | 95–05–164A | 02 |
| 05 | IL | NAPERVILLE, CITY OF | 1702130021C | 12/19/94 | 94–05–273P | 06 |
| 05 | IL | NAPERVILLE, CITY OF | 1702130021C | 11/09/94 | 94–05–283P | 06 |
| 05 | IL | NORMAL, TOWN OF | 1705020005B | 10/14/94 | 94–05–1238A | 02 |
| 05 | IL | NORTHBROOK, VILLAGE OF | 1701320009D | 10/18/94 | | 02 |
| 05 | IL | OAK FOREST, CITY OF | 1701360005C | 12/22/94 | 95–05–140A | 02 |
| 05 | IL | OAK LAWN, VILLAGE OF | 1701370004C | 11/17/94 | 94–05–1336A | 01 |
| 05 | IL | OAK LAWN, VILLAGE OF | 1701370004C | 10/07/94 | 94–05–974A | 01 |
| 05 | IL | OAK LAWN, VILLAGE OF | 1701370004C | 11/17/94 | 95–05–028A | 01 |
| 05 | IL | PALATINE, VILLAGE OF | 1751700005B | 10/14/94 | 94–05–1350A | 02 |
| 05 | IL | ROUND LAKE BEACH, VILLAGE OF | 1703890001C | 10/18/94 | | 02 |
| 05 | IL | ST. CHARLES, CITY OF | 1703300004C | 12/09/94 | 95–05–204A | 01 |
| 05 | IL | ST. CLAIR COUNTY* | 1706160040A | 10/31/94 | 95–05–130A | 02 |
| 05 | IL | ST. JOSEPH, VILLAGE OF | 1700320001B | 10/18/94 | | 02 |
| 05 | IL | ST. JOSEPH, VILLAGE OF | 1700320001B | 10/18/94 | | 02 |
| 05 | IL | TINLEY PARK, CITY OF | 1701690005E | 12/15/94 | 95–05–188A | 01 |
| 05 | IL | WEST FRANKFORT, CITY OF | 1702390005C | 10/18/94 | | 02 |
| 05 | IL | WHEELING, VILLAGE OF | 1701730005C | 10/19/94 | 94–05–1360A | 01 |
| 05 | IL | WHEELING, VILLAGE OF | 1701730005C | 11/17/94 | 95–05–226A | 02 |
| 05 | IL | WHEELING, VILLAGE OF | 1701730005C | 11/01/94 | 95–05–270A | 01 |
| 05 | IL | WHEELING, VILLAGE OF | 1701730005C | 12/28/94 | 95–05–438A | 01 |
| 05 | IL | WILL COUNTY* | 1706950020B | 12/13/94 | 95–05–314C | 01 |
| 05 | IL | WILL COUNTY* | 1706950060B | 12/13/94 | 95–05–314C | 01 |
| 05 | IL | WINNETKA, VILLAGE OF | 1701760003B | 12/19/94 | 95–05–372A | 02 |
| 05 | IN | ALLEN COUNTY* | 18003C0165D | 11/01/94 | 95–05–118A | 02 |
| 05 | IN | ALLEN COUNTY* | 18003C0285D | 12/05/94 | 95–05–228A | 02 |
| 05 | IN | ALLEN COUNTY* | 18003C0350D | 12/21/94 | 95–05–550A | 02 |

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|---|---|---|---|---|---|---|
| 05 | IN | ALLEN COUNTY* | 18003C0430D | 11/23/94 | 95–05–404A | 01 |
| 05 | IN | ANGOLA, CITY OF | 180244 B | 10/18/94 | | 02 |
| 05 | IN | ANGOLA, CITY OF | 180244 B | 10/18/94 | | 02 |
| 05 | IN | CARMEL, CITY OF | 1800810013C | 10/03/94 | 94–05–1216A | 01 |
| 05 | IN | CHESTERTON, TOWN OF | 1802010005C | 12/08/94 | 95–05–422A | 02 |
| 05 | IN | CLARK COUNTY* | 1804260175C | 11/29/94 | 95–05–124A | 02 |
| 05 | IN | DYER, TOWN OF | 1801290001C | 11/29/94 | 95–05–126A | 02 |
| 05 | IN | FORT WAYNE, CITY OF | 18003C0280D | 12/30/94 | 95–05–304A | 01 |
| 05 | IN | FORT WAYNE, CITY OF | 18003C0285D | 10/18/94 | | 08 |
| 05 | IN | FORT WAYNE, CITY OF | 18003C0285D | 11/29/94 | 95–05–006A | 02 |
| 05 | IN | FORT WAYNE, CITY OF | 18003C0290D | 11/29/94 | 95–05–006A | 02 |
| 05 | IN | GRIFFITH, TOWN OF | 1851750003C | 11/29/94 | 94–05–1338A | 02 |
| 05 | IN | HENDRICKS COUNTY* | 1804150100B | 11/08/94 | 95–05–114A | 02 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590010D | 11/29/94 | 95–05–230A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590010D | 12/23/94 | 95–05–320A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590020D | 11/29/94 | 95–05–220A | 02 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590030D | 12/05/94 | 95–05–344A | 02 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590035D | 11/29/94 | 94–05–1346A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590040D | 10/24/94 | 94–05–1064A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590040D | 10/14/94 | 94–05–1310A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590040D | 10/26/94 | 94–05–1368A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590040D | 12/09/94 | 95–05–332A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590045D | 11/29/94 | 95–05–388A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590060D | 12/29/94 | 94–05–1162A | 01 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590080D | 11/01/94 | 95–05–086A | 02 |
| 05 | IN | INDIANAPOLIS, CITY OF | 1801590095D | 12/16/94 | 94–05–1016A | 01 |
| 05 | IN | JEFFERSONVILLE, CITY OF | 1800270005D | 10/27/94 | 95–05–026A | 02 |
| 05 | IN | KOSCIUSKO COUNTY* | 18085C0031C | 10/24/94 | 95–05–132A | 02 |
| 05 | IN | KOSCIUSKO COUNTY* | 18085C0031C | 10/24/94 | 95–05–134A | 02 |
| 05 | IN | KOSCIUSKO COUNTY* | 18085C0080C | 11/14/94 | 94–05–760A | 01 |
| 05 | IN | KOSCIUSKO COUNTY* | 18085C0080C | 10/31/94 | 95–05–076A | 02 |
| 05 | IN | LAKE COUNTY* | 1801260120B | 12/14/94 | 94–05–1294A | 02 |
| 05 | IN | LEBANON, CITY OF | 1800130001C | 10/03/94 | 94–05–227P | 05 |
| 05 | IN | LOWELL, TOWN OF | 1801370005C | 12/13/94 | 95–05–152A | 02 |
| 05 | IN | MONROEVILLE, TOWN OF | 18003C0455D | 11/08/94 | | 02 |
| 05 | IN | MUNSTER, TOWN OF | 1801390002B | 12/16/94 | 94–05–1222C | 02 |
| 05 | IN | NOBLE COUNTY* | 1801830075B | 10/21/94 | 94–05–1266A | 02 |
| 05 | IN | NOBLESVILLE, CITY OF | 1800820025E | 10/07/94 | 94–05–1214A | 02 |
| 05 | IN | NOBLESVILLE, CITY OF | 1800820025E | 10/04/94 | 94–05–988A | 01 |
| 05 | IN | NOBLESVILLE, CITY OF | 1800820025E | 10/26/94 | 94–05–994A | 01 |
| 05 | IN | NORTH LIBERTY, TOWN OF | 180228 B | 11/08/94 | | 02 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 10/20/94 | 94–05–1334A | 01 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 10/18/94 | 94–05–1382A | 02 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 10/12/94 | 94–05–786A | 01 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 12/09/94 | 95–05–328A | 02 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 12/14/94 | 95–05–376A | 02 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 11/30/94 | 95–05–406A | 02 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 12/19/94 | 95–05–408A | 02 |
| 05 | IN | SEYMOUR, CITY OF | 1800990004B | 12/12/94 | 95–05–450A | 02 |
| 05 | IN | STEUBEN COUNTY* | 1802430025B | 10/21/94 | 94–05–1302A | 02 |
| 05 | IN | TIPPECANOE COUNTY* | 1804280075B | 11/01/94 | 95–05–160A | 02 |
| 05 | IN | TIPTON COUNTY* | 1804750003B | 12/09/94 | 94–05–1354A | 01 |
| 05 | IN | TIPTON, CITY OF | 1802550001B | 12/09/94 | 95–05–312A | 02 |
| 05 | IN | VANDERBURGH COUNTY* | 1802560025C | 12/19/94 | 95–05–268A | 02 |
| 05 | IN | VANDERBURGH COUNTY* | 1802560025C | 12/23/94 | 95–05–298A | 01 |
| 05 | IN | VANDERBURGH COUNTY* | 1802560050B | 12/14/94 | 95–05–458A | 01 |
| 05 | IN | VANDERBURGH COUNTY* | 1802560050B | 12/29/94 | 95–05–528A | 02 |
| 05 | IN | VANDERBURGH COUNTY* | 1802560075C | 11/14/94 | 94–05–948P | 06 |
| 05 | IN | VIGO COUNTY* | 1802630070B | 12/23/94 | 94–05–089P | 06 |
| 05 | IN | WEST LAFAYETTE, CITY OF | 1802540000 | 10/18/94 | | 02 |
| 05 | IN | WEST LAFAYETTE, CITY OF | 1802540000 | 10/18/94 | | 02 |
| 05 | IN | WHITLEY COUNTY* | 1802980001B | 10/21/94 | 94–05–1266A | 02 |
| 05 | MI | CLEVELAND, TOWNSHIP OF | 2603029999A | 12/14/94 | 95–05–366A | 02 |
| 05 | MI | FRASER, CITY OF | 2601220001B | 11/14/94 | 95–05–096A | 01 |
| 05 | MI | GREENBUSH, TOWNSHIP OF | 2600010004C | 10/21/94 | 94–05–1128A | 02 |
| 05 | MI | GREENBUSH, TOWNSHIP OF | 2600010007C | 12/19/94 | 95–05–206A | 02 |
| 05 | MI | GREENBUSH, TOWNSHIP OF | 2600010007C | 12/19/94 | 95–05–206A | 02 |
| 05 | MI | GROSSE POINTE PARK, CITY OF | 2602300005B | 10/21/94 | 93–05–247R | 08 |
| 05 | MI | HAMBURG, TOWNSHIP OF | 2601180010C | 12/13/94 | 95–05–148A | 02 |
| 05 | MI | HARRISON, TOWNSHIP OF | 2601230005C | 12/13/94 | 95–05–046A | 02 |

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|---|---|---|---|---|---|---|
| 05 | MI | HARRISON, TOWNSHIP OF | 2601230005C | 12/05/94 | 95–05–196A | 02 |
| 05 | MI | HARRISON, TOWNSHIP OF | 2601230010C | 12/29/94 | 95–05–524A | 02 |
| 05 | MI | KOCHVILLE, TOWNSHIP OF | 2605010002A | 10/31/94 | 94–05–1314A | 02 |
| 05 | MI | ONEKAMA, TOWNSHIP OF | 2602760001B | 12/29/94 | 95–05–360A | 02 |
| 05 | MI | SELMA, TOWNSHIP OF | 2607570005A | 11/22/94 | | 02 |
| 05 | MI | SHELBY, TOWNSHIP OF | 2601260010B | 11/29/94 | 95–05–238A | 02 |
| 05 | MI | ST. CLAIR SHORES, CITY OF | 2601270005B | 10/14/94 | 94–05–1190A | 02 |
| 05 | MI | ST. JOSEPH, TOWNSHIP OF | 2600450005A | 11/29/94 | 94–05–946A | 01 |
| 05 | MI | SYLVAN LAKE, CITY OF | 2607010001B | 11/18/94 | 95–05–042A | 01 |
| 05 | MI | SYLVAN LAKE, CITY OF | 2607010001B | 11/18/94 | 95–05–100A | 02 |
| 05 | MI | TRENTON, CITY OF | 2602440003C | 10/17/94 | 94–05–1204A | 02 |
| 05 | MI | WATERFORD, CHARTER TOWNSHIP OF | 2602840010B | 11/03/94 | 95–05–012A | 02 |
| 05 | MI | WEST BLOOMFIELD, TOWNSHIP OF | 2601820005B | 12/06/94 | 95–05–542A | 02 |
| 05 | MN | BLAINE, CITY OF | 2700070005C | 10/24/94 | 94–05–1380A | 01 |
| 05 | MN | CHISAGO COUNTY* | 2706820025B | 11/22/94 | | 02 |
| 05 | MN | COON RAPIDS,CITY OF | 2700110001A | 10/14/94 | 94–05–790A | 01 |
| 05 | MN | KOOCHICHING COUNTY* | 2702330006B | 12/14/94 | 95–05–050A | 02 |
| 05 | MN | KOOCHICHING COUNTY* | 2702330006B | 12/09/94 | 95–05–368A | 02 |
| 05 | MN | LAKEVILLE, CITY OF | 2701070005B | 12/14/94 | 95–05–146A | 01 |
| 05 | MN | LINO LAKES, CITY OF | 2700150010B | 10/20/94 | 94–05–1372A | 01 |
| 05 | MN | PINE COUNTY* | 2707040340B | 10/20/94 | 95–05–024A | 02 |
| 05 | MN | PRIOR LAKE, CITY OF | 2704320005B | 10/26/94 | 94–05–1194A | 02 |
| 05 | MN | STEARNS COUNTY* | 2705460075A | 10/24/94 | 94–05–1122A | 01 |
| 05 | OH | AUGLAIZE COUNTY* | 39011C0085C | 10/26/94 | 94–05–1150A | 02 |
| 05 | OH | BEACHWOOD, CITY OF | 3900940001A | 11/21/94 | 94–05–231P | 06 |
| 05 | OH | BRUNSWICK, CITY OF | 3903800001B | 12/14/94 | 95–05–214A | 02 |
| 05 | OH | CARROLL COUNTY* | 3907630075B | 12/29/94 | 95–05–482A | 02 |
| 05 | OH | CELINA, CITY OF | 3903930005C | 10/18/94 | | 02 |
| 05 | OH | CELINA, CITY OF | 3903930005C | 10/18/94 | | 02 |
| 05 | OH | COLUMBUS, CITY OF | 3901700045B | 10/07/94 | 94–05–1154A | 01 |
| 05 | OH | DUBLIN, CITY OF | 3906730007C | 11/01/94 | 95–05–078A | 02 |
| 05 | OH | FRANKLIN COUNTY* | 3901670065B | 11/23/94 | 94–05–980A | 01 |
| 05 | OH | GRAFTON, VILLAGE OF | 3906140005A | 10/18/94 | | 02 |
| 05 | OH | GREENE COUNTY* | 3901930080B | 12/21/94 | 95–05–070A | 02 |
| 05 | OH | GREENE COUNTY* | 3901930080B | 11/17/94 | 95–05–194A | 02 |
| 05 | OH | LAKEVIEW, VILLAGE OF | 390341 C | 10/18/94 | | 02 |
| 05 | OH | LANCASTER, CITY OF | 3901610003D | 10/24/94 | 95–05–094A | 02 |
| 05 | OH | LANCASTER, CITY OF | 3901610005D | 12/16/94 | 95–05–120A | 02 |
| 05 | OH | LICKING COUNTY* | 3903280200B | 11/15/94 | 94–05–1210A | 02 |
| 05 | OH | LUCAS COUNTY* | 3903590015B | 10/07/94 | 94–05–1356A | 02 |
| 05 | OH | MARION COUNTY* | 39101C0150C | 11/29/94 | 95–05–068A | 02 |
| 05 | OH | MENTOR, CITY OF | 3903170005D | 10/04/94 | 94–05–1296A | 02 |
| 05 | OH | MERCER COUNTY* | 3903920100B | 12/29/94 | 95–05–530A | 02 |
| 05 | OH | MIAMI COUNTY* | 3903980110B | 10/14/94 | 94–05–1058A | 02 |
| 05 | OH | NAPOLEON, CITY OF | 3902660005C | 10/07/94 | 94–05–1358A | 01 |
| 05 | OH | PUTNAM COUNTY* | 3904650135B | 10/07/94 | 94–05–1212A | 02 |
| 05 | OH | SANDUSKY COUNTY* | 3904860200B | 11/17/94 | 95–05–016A | 02 |
| 05 | OH | SYLVANIA, CITY OF | 3903640002B | 12/14/94 | 95–05–208A | 01 |
| 05 | OH | TOLEDO, CITY OF | 3953730010A | 10/14/94 | 94–05–1344A | 01 |
| 05 | OH | TOLEDO, CITY OF | 3953730010A | 12/14/94 | 95–05–378A | 02 |
| 05 | OH | TOLEDO, CITY OF | 3953730020A | 10/18/94 | | 08 |
| 05 | OH | UNION COUNTY* | 3908080100B | 12/07/94 | 95–05–306A | 02 |
| 05 | OH | WEST LIBERTY, VILLAGE OF | 3903430001D | 11/29/94 | 95–05–142A | 02 |
| 05 | OH | WOOD COUNTY* | 3908090012C | 11/10/94 | 94–05–1264A | 01 |
| 05 | OH | WOOD COUNTY* | 3908090012C | 12/05/94 | 95–05–048A | 01 |
| 05 | OH | WOOD COUNTY* | 3908090012C | 11/03/94 | 95–05–192A | 01 |
| 05 | OH | WOOD COUNTY* | 3908090012C | 12/21/94 | 95–05–494A | 01 |
| 05 | OH | WOOD COUNTY* | 3908090016B | 12/29/94 | 95–05–434A | 01 |
| 05 | OH | WOOD COUNTY* | 3908090016B | 12/30/94 | 95–05–492A | 01 |
| 05 | WI | BRILLION, CITY OF | 5500360001C | 10/27/94 | 95–05–090A | 02 |
| 05 | WI | COLUMBIA COUNTY* | 5505810075C | 11/29/94 | 95–05–276A | 02 |
| 05 | WI | FOND DU LAC, CITY OF | 5501360005D | 12/09/94 | 95–05–202A | 02 |
| 05 | WI | GREENFIELD, CITY OF | 5502770001B | 11/22/94 | | 02 |
| 05 | WI | GREENFIELD, CITY OF | 5502770001B | 11/22/94 | | 02 |
| 05 | WI | MARINETTE COUNTY* | 5502590625B | 11/18/94 | 94–05–644A | 02 |
| 05 | WI | MENOMONIE, CITY OF | 5501230005B | 11/29/94 | 95–05–278A | 01 |
| 05 | WI | MEQUON, CITY OF | 55089C0085D | 12/12/94 | 95–05–374A | 02 |
| 05 | WI | NEW BERLIN, CITY OF | 5504870004D | 10/24/94 | 94–05–802A | 01 |
| 05 | WI | OUTAGAMIE COUNTY* | 5503020050B | 12/05/94 | 95–05–340A | 02 |
| 05 | WI | OUTAGAMIE COUNTY* | 5503020083C | 11/29/94 | 95–05–074A | 02 |

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|---|---|---|---|---|---|---|
| 05 | WI | OZAUKEE COUNTY* | 55089C0064D | 12/13/94 | 94–05–1184A | 02 |
| 05 | WI | RACINE COUNTY* | 5503470010B | 11/17/94 | 95–05–018A | 02 |
| 06 | AR | CLEBURNE COUNTY* | 0504240125C | 12/29/94 | R6–94–12–132 | 02 |
| 06 | AR | FORT SMITH, CITY OF | 0550130005D | 10/17/94 | R6–94–10–113 | 02 |
| 06 | AR | GARLAND COUNTY* | 05051C0154C | 12/02/94 | R6–94–12–002 | 02 |
| 06 | AR | INDEPENDENCE COUNTY | 0500900510B | 11/18/94 | R6–94–11–158 | 02 |
| 06 | AR | JONESBORO, CITY OF | 05031C0134C | 12/12/94 | 95–06–043A | 01 |
| 06 | AR | LITTLE ROCK, CITY OF | 0501810007E | 11/16/94 | R6–94–11–104 | 02 |
| 06 | AR | LITTLE ROCK, CITY OF | 0501810017E | 12/16/94 | R6–94–12–080 | 02 |
| 06 | AR | VAN BUREN, CITY OF | 05033C0170E | 11/16/94 | R6–94–09–217 | 02 |
| 06 | AR | VAN BUREN, CITY OF | 05033C0170E | 12/02/94 | R6–94–11–255 | 02 |
| 06 | AR | WHITE COUNTY* | 0504670013A | 10/27/94 | R6–94–10–231 | 02 |
| 06 | LA | ALEXANDRIA, CITY OF | 2201460005E | 12/02/94 | R6–94–12–008 | 02 |
| 06 | LA | ALLEN PARISH* | 2200090225B | 10/04/94 | 94–06–333A | 02 |
| 06 | LA | ASCENSION PARISH* | 2200130030C | 11/10/94 | R6–94–11–054 | 02 |
| 06 | LA | ASCENSION PARISH* | 2200130030C | 11/17/94 | R6–94–11–129 | 02 |
| 06 | LA | ASCENSION PARISH* | 2200130030C | 11/28/94 | R6–94–11–195 | 02 |
| 06 | LA | ASCENSION PARISH* | 2200130045C | 11/21/94 | R6–94–11–162 | 02 |
| 06 | LA | BOSSIER CITY, CITY OF | 2200330005C | 10/12/94 | R6–94–10–074 | 02 |
| 06 | LA | BOSSIER CITY, CITY OF | 2200330010C | 12/19/94 | R6–94–12–120 | 02 |
| 06 | LA | BOSSIER CITY, CITY OF | 2200330030C | 11/16/94 | R6–94–11–106 | 02 |
| 06 | LA | BOSSIER CITY, CITY OF | 2200330030C | 12/29/94 | R6–94–12–000 | 02 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 10/14/94 | R6–94–10–099 | 01 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 10/14/94 | R6–94–10–100 | 01 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 10/14/94 | R6–94–10–101 | 01 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 11/14/94 | R6–94–11–084 | 02 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 11/14/94 | R6–94–11–085 | 02 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 11/28/94 | R6–94–11–219 | 02 |
| 06 | LA | BOSSIER PARISH* | 2200310285B | 12/16/94 | R6–94–12–000 | 02 |
| 06 | LA | CADDO PARISH* | 2203610075B | 10/17/94 | R6–94–10–117 | 02 |
| 06 | LA | CADDO PARISH* | 2203610245B | 12/29/94 | R6–94–12–145 | 02 |
| 06 | LA | CADDO PARISH* | 2203610250B | 10/04/94 | R6–94–10–032 | 02 |
| 06 | LA | CALCASIEU PARISH* | 2200370300B | 12/30/94 | R6–94–12–191 | 02 |
| 06 | LA | COVINGTON, CITY OF | 2202000005B | 11/23/94 | 94–06–179A | 01 |
| 06 | LA | DENHAM SPRINGS, CITY OF | 2201160005B | 11/08/94 | R6–94–11–034 | 02 |
| 06 | LA | EAST BATON ROUGE PARISH | 2200580095D | 12/05/94 | 95–06–042A | 02 |
| 06 | LA | EAST BATON ROUGE PARISH | 2200580110D | 10/25/94 | 94–06–388A | 01 |
| 06 | LA | EAST BATON ROUGE PARISH | 2200580115D | 12/27/94 | 95–06–073A | 01 |
| 06 | LA | EAST BATON ROUGE PARISH | 2200580125C | 10/19/94 | R6–94–10–151 | 02 |
| 06 | LA | EAST BATON ROUGE PARISH | 2200580125C | 12/30/94 | R6–94–12–210 | 02 |
| 06 | LA | FRANKLINTON, TOWN OF | 2202330001B | 10/26/94 | R6–94–10–186 | 02 |
| 06 | LA | JEFFERSON PARISH* | 225199 C | 11/15/94 | R6–94–10–207 | 02 |
| 06 | LA | LAFAYETTE PARISH* | 2201010010C | 10/26/94 | R6–94–10–197 | 02 |
| 06 | LA | LAFAYETTE PARISH* | 2201010040C | 11/07/94 | R6–94–09–185 | 02 |
| 06 | LA | LAFAYETTE PARISH* | 2201010080C | 12/30/94 | R6–94–12–190 | 01 |
| 06 | LA | LAFAYETTE, CITY OF | 2201050010F | 12/05/94 | R6–94–12–023 | 02 |
| 06 | LA | LIVINGSTON PARISH* | 2201130025B | 10/13/94 | 94–06–370A | 02 |
| 06 | LA | LIVINGSTON PARISH* | 2201130050B | 11/07/94 | R6–94–11–013 | 02 |
| 06 | LA | NEW ORLEANS/ORLEANS PARISH | 2252030160E | 10/18/94 | R6–94–10–096 | 02 |
| 06 | LA | RUSTON, CITY OF | 2203470001B | 10/13/94 | R6–94–09–169 | 02 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360006C | 10/13/94 | R6–94–10–092 | 08 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360013C | 10/17/94 | R6–94–10–123 | 02 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360013C | 10/17/94 | R6–94–10–123 | 02 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360018B | 10/26/94 | R6–94–10–203 | 02 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360019B | 12/09/94 | R6–94–12–055 | 02 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360033C | 11/07/94 | R6–94–10–118 | 02 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360034C | 11/07/94 | R6–94–10–009 | 08 |
| 06 | LA | SHREVEPORT, CITY OF | 2200360034C | 10/14/94 | R6–94–10–098 | 01 |
| 06 | LA | ST. BERNARD PARISH* | 2252040290B | 10/19/94 | 94–06–296A | 01 |
| 06 | LA | ST. MARTIN PARISH* | 2201780075B | 10/12/94 | R6–94–10–084 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050245C | 10/19/94 | R6–94–10–145 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050245C | 11/10/94 | R6–94–10–225 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050245C | 12/06/94 | R6–94–12–036 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050245C | 12/16/94 | R6–94–12–108 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050245C | 12/30/94 | R6–94–12–194 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050360C | 11/28/94 | R6–94–11–072 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050360C | 11/21/94 | R6–94–11–164 | 02 |
| 06 | LA | ST. TAMMANY PARISH* | 2252050440C | 12/16/94 | R6–94–12–102 | 02 |
| 06 | NM | ALBUQUERQUE, CITY OF | 3500020018C | 11/15/94 | 94–06–376P | 05 |
| 06 | NM | ALBUQUERQUE, CITY OF | 3500020024C | 10/27/94 | 94–06–353P | 06 |

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| 06 | NM | CORRALES, VILLAGE OF | 3500940002B | 11/18/94 | 95–06–005A | 08 |
| 06 | NM | FARMINGTON, CITY OF | 3500670705D | 11/18/94 | R6–94–11–158 | 02 |
| 06 | NM | RIO RANCHO, CITY OF | 3501450025A | 10/25/94 | R6–94–10 | 02 |
| 06 | OK | BIXBY, TOWN OF | 4002070005B | 11/28/94 | R6–94–11–218 | 02 |
| 06 | OK | BROKEN ARROW, CITY OF | 4002360006C | 10/03/94 | R6–94–10–001 | 08 |
| 06 | OK | BROKEN ARROW, CITY OF | 4002360005D | 11/14/94 | R6–94–11–090 | 02 |
| 06 | OK | DELAWARE COUNTY* | 4005020001B | 12/15/94 | R6–94–11–075 | 02 |
| 06 | OK | EDMOND, CITY OF | 4002520020B | 12/19/94 | R6–94–12–136 | 02 |
| 06 | OK | EDMOND, CITY OF | 4002520045B | 12/22/94 | R6–94–12–000 | 02 |
| 06 | OK | JENKS, CITY OF | 4002090002B | 10/14/94 | R6–94–10–108 | 02 |
| 06 | OK | LAWTON, CITY OF | 40031C0232C | 11/09/94 | 95–06–025A | 01 |
| 06 | OK | LAWTON, CITY OF | 40031C0252C | 12/30/94 | R6–94–12–221 | 02 |
| 06 | OK | MOORE, CITY OF | 4000440001E | 10/26/94 | R6–94–10–214 | 02 |
| 06 | OK | MUSTANG, CITY OF | 4004090005A | 12/30/94 | R6–94–12–198 | 02 |
| 06 | OK | NORMAN, CITY OF | 4000460015B | 11/02/94 | 94–06–201P | 05 |
| 06 | OK | NORMAN, CITY OF | 4000460015B | 10/03/94 | R6–94–10–004 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780010C | 12/01/94 | R6–94–11–232 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780110C | 10/26/94 | R6–94–10–194 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780110C | 11/18/94 | R6–94–11–141 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780155E | 10/03/94 | R6–94–10–002 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780155E | 10/13/94 | R6–94–10–012 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780160D | 10/07/94 | R6–94–09–066 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780170E | 10/28/94 | 94–06–198P | 05 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780170E | 10/27/94 | R6–94–10–234 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780170E | 11/18/94 | R6–94–11–135 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780190F | 11/08/94 | R6–94–11–014 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780190F | 11/18/94 | R6–94–12–156 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780190F | 12/29/94 | R6–94–12–128 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780190F | 12/29/94 | R6–94–12–129 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780195C | 10/04/94 | 94–06–359A | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780195C | 12/06/94 | R6–94–12–034 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780200D | 12/02/94 | R6–94–11–224 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780205D | 11/08/94 | R6–94–11–036 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780205D | 12/16/94 | R6–94–12–097 | 02 |
| 06 | OK | OKLAHOMA CITY, CITY OF | 4053780215C | 12/19/94 | R6–94–12–122 | 02 |
| 06 | OK | LAHOMA CITY, CITY OF | 4053780255C | 11/18/94 | R6–94–11–137 | 02 |
| 06 | OK | ROGERS COUNTY* | 4053790105B | 12/29/94 | R6–94–12–139 | 02 |
| 06 | OK | STILLWATER, CITY OF | 4053800004C | 11/07/94 | R6–94–10–244 | 02 |
| 06 | OK | STILLWATER, CITY OF | 4053800003C | 11/14/94 | R6–94–10–241 | 08 |
| 06 | OK | STILLWATER, CITY OF | 4053800004C | 12/16/94 | R6–94–12–114 | 02 |
| 06 | OK | TULSA COUNTY * | 4004620165B | 10/26/94 | R6–94–10–215 | 02 |
| 06 | OK | TULSA, CITY OF | 4053810045E | 10/07/94 | R6–94–09–111 | 02 |
| 06 | OK | TULSA, CITY OF | 4053810070F | 11/17/94 | R6–94–11–111 | 02 |
| 06 | OK | TULSA, CITY OF | 4053810070F | 10/17/94 | R6–94–10–120 | 08 |
| 06 | OK | TULSA, CITY OF | 4053810070F | 12/07/94 | R6–94–12–044 | 02 |
| 06 | OK | WAGONER COUNTY | 4002150027B | 10/25/94 | R6–94–10–158 | 08 |
| 06 | OK | WARR ACRES, CITY OF | 4004490001A | 11/08/94 | R6–94–11–025 | 02 |
| 06 | OK | WASHINGTON COUNTY | 4004590100A | 10/14/94 | R6–94–09–187 | 02 |
| 06 | OK | YUKON, CITY OF | 4000280010B | 12/09/94 | R6–94–12–046 | 01 |
| 06 | TX | ALLEN, CITY OF | 48085C0380E | 11/07/94 | 94–06–157P | 06 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0162G | 10/25/94 | R6–94–10–157 | 02 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0164G | 10/14/94 | R6–94–10–097 | 02 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0167G | 10/25/94 | R6–94–10–179 | 02 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0171G | 11/30/94 | 94–06–184P | 05 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0195G | 10/12/94 | R6–94–10–082 | 02 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0198G | 11/14/94 | R6–94–11–086 | 01 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0198G | 11/16/94 | R6–94–11–093 | 01 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0232G | 12/16/94 | R6–94–12–104 | 02 |
| 06 | TX | ARLINGTON, CITY OF | 48439C0236G | 10/05/94 | 94–06–328A | 01 |
| 06 | TX | AUSTIN, CITY OF | 48453C0155E | 12/09/94 | R6–94–12–052 | 02 |
| 06 | TX | AUSTIN, CITY OF | 48453C0165E | 10/14/94 | R6–94–09–196 | 02 |
| 06 | TX | AUSTIN, CITY OF | 48453C0195E | 11/23/94 | 95–06–023A | 01 |
| 06 | TX | AUSTIN, CITY OF | 48453C0205E | 10/03/94 | R6–94–10–015 | 02 |
| 06 | TX | AUSTIN, CITY OF | 48453C0205E | 10/26/94 | R6–94–10–195 | 02 |
| 06 | TX | AUSTIN, CITY OF | 48453C0210E | 12/29/94 | 95–06–029P | 06 |
| 06 | TX | AUSTIN, CITY OF | 48453C0210E | 10/13/94 | R6–94–10–095 | 02 |
| 06 | TX | AUSTIN, CITY OF | 48453C0290E | 10/04/94 | R6–94–10–033 | 02 |
| 06 | TX | AUSTIN, CITY OF | 48453C0200E | 11/14/94 | R6–94–11–000 | 08 |
| 06 | TX | AZLE, CITY OF | 4805840005B | 11/21/94 | R6–94–10–124 | 02 |
| 06 | TX | BEDFORD, CITY OF | 48439C0095G | 10/04/94 | R6–94–09–180 | 02 |

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| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 06 | TX | BEDFORD, CITY OF | 48439C0100G | 10/12/94 | 94–06–310A | 01 |
| 06 | TX | BEDFORD, CITY OF | 48439C0100G | 10/31/94 | 94–06–345P | 05 |
| 06 | TX | BELL COUNTY* | 4807060200B | 10/03/94 | R6–94–10–011 | 02 |
| 06 | TX | BEXAR COUNTY* | 4800350305C | 10/27/94 | 94–06–357A | 02 |
| 06 | TX | BEXAR COUNTY* | 4800350380C | 10/07/94 | R6–94–10–057 | 02 |
| 06 | TX | BEXAR COUNTY* | 4800350380C | 11/08/94 | R6–94–10–258 | 02 |
| 06 | TX | BURLESON, CITY OF | 48251C0029H | 11/23/94 | 94–06–094A | 01 |
| 06 | TX | CANYON, CITY OF | 4805330001D | 12/14/94 | 94–06–187R | 01 |
| 06 | TX | CARROLLTON, CITY OF | 4801670000 | 11/10/94 | R6–94–11–045 | 02 |
| 06 | TX | CARROLLTON, CITY OF | 4801670005F | 10/31/94 | 94–06–107P | 05 |
| 06 | TX | CARROLLTON, CITY OF | 4801670005F | 12/13/94 | 94–06–154P | 05 |
| 06 | TX | CARROLLTON, CITY OF | 4801670015E | 10/31/94 | 94–06–107P | 05 |
| 06 | TX | CEDAR HILL, CITY OF | 4801680015B | 12/14/94 | 95–06–007P | 06 |
| 06 | TX | CEDAR PARK, CITY OF | 48491C0218C | 12/30/94 | R6–94–12–187 | 02 |
| 06 | TX | COLLEYVILLE, TOWN OF | 48439C0060G | 12/13/94 | 94–06–010P | 05 |
| 06 | TX | COLLEYVILLE, TOWN OF | 48439C0095G | 11/18/94 | R6–94–11–134 | 02 |
| 06 | TX | COLLIN COUNTY* | 48085C0255E | 12/07/94 | R6–94–12–041 | 02 |
| 06 | TX | COLLIN COUNTY* | 48085C0290F | 10/31/94 | 94–06–137P | 05 |
| 06 | TX | CORINTH, TOWN OF | 4811430004B | 10/12/94 | R6–94–10–091 | 02 |
| 06 | TX | DALLAS, CITY OF | 4801710005C | 11/14/94 | R6–94–11–073 | 01 |
| 06 | TX | DALLAS, CITY OF | 4801710025C | 12/15/94 | 95–06–024P | 05 |
| 06 | TX | DALLAS, CITY OF | 4801710030D | 12/15/94 | 95–06–024P | 05 |
| 06 | TX | DALLAS, CITY OF | 4801710095C | 11/10/94 | R6–94–11–046 | 02 |
| 06 | TX | DALLAS, CITY OF | 4801710100D | 12/22/94 | 95–06–028A | 01 |
| 06 | TX | DALLAS, CITY OF | 4801710100D | 12/01/94 | R6–94–11–168 | 02 |
| 06 | TX | DALLAS, CITY OF | 4801710100D | 11/22/94 | R6–94–11–186 | 02 |
| 06 | TX | DALLAS, CITY OF | 4801710100D | 12/05/94 | R6–94–12–003 | 02 |
| 06 | TX | EDINBURG,CITY OF | 4803380015D | 12/16/94 | 95–06–060A | 02 |
| 06 | TX | EL PASO, CITY OF | 4802140021C | 11/28/94 | R6–94–11–211 | 01 |
| 06 | TX | EL PASO, CITY OF | 4802140022D | 10/14/94 | 93–06–349P | 05 |
| 06 | TX | EL PASO, CITY OF | 4802140022D | 12/12/94 | 95–06–030P | 05 |
| 06 | TX | EL PASO, CITY OF | 4802140026C | 12/05/94 | R6–94–12–018 | 02 |
| 06 | TX | EL PASO, CITY OF | 4802140026C | 10/25/94 | R6–94–10–159 | 08 |
| 06 | TX | FARMERS BRANCH, CITY OF | 4801740005C | 12/05/94 | R6–94–12–014 | 02 |
| 06 | TX | FLOWER MOUND, TOWN OF | 4807770005A | 10/26/94 | R6–94–10–205 | 02 |
| 06 | TX | FORT WORTH, CITY OF | 48439C0090G | 12/12/94 | 95–06–020A | 01 |
| 06 | TX | FORT WORTH, CITY OF | 48439C0165G | 11/08/94 | R6–94–11–001 | 02 |
| 06 | TX | FORT WORTH, CITY OF | 48439C0190G | 12/12/94 | 95–06–032A | 01 |
| 06 | TX | FORT WORTH, CITY OF | 48439C0190G | 10/17/94 | R6–94–10–114 | 01 |
| 06 | TX | FREDERICKSBURG, CITY OF | 4802520002B | 10/25/94 | R6–94–10–160 | 02 |
| 06 | TX | GARLAND, CITY OF | 4854710020D | 10/24/94 | 94–06–300P | 05 |
| 06 | TX | GARLAND, CITY OF | 4854710020D | 11/17/94 | R6–94–11–108 | 01 |
| 06 | TX | GILLESPIE COUNTY* | 4806960010B | 11/10/94 | 94–06–368A | 02 |
| 06 | TX | GRAND PRAIRIE, CITY OF | 4854720010E | 11/30/94 | 94–06–184P | 05 |
| 06 | TX | GRAND PRAIRIE, CITY OF | 4854720025E | 12/07/94 | R6–94–12–042 | 02 |
| 06 | TX | GRAPEVINE, CITY OF | 48439C0060G | 12/13/94 | 94–06–010P | 05 |
| 06 | TX | HARRIS COUNTY* | 48201C0060G | 11/30/94 | 94–06–144P | 05 |
| 06 | TX | HARRIS COUNTY* | 48201C0065G | 11/30/94 | 94–06–144P | 05 |
| 06 | TX | HARRIS COUNTY* | 48201C0090G | 12/05/94 | R6–94–12–015 | 02 |
| 06 | TX | HARRIS COUNTY* | 48201C0105G | 11/30/94 | 94–06–144P | 05 |
| 06 | TX | HARRIS COUNTY* | 48201C0110G | 11/30/94 | 94–06–144P | 05 |
| 06 | TX | HARRIS COUNTY* | 48201C0135G | 12/19/94 | 95–06–077A | 02 |
| 06 | TX | HARRIS COUNTY* | 48201C0140G | 10/25/94 | R6–94–10–175 | 02 |
| 06 | TX | HARRIS COUNTY* | 48201C0150G | 11/18/94 | R6–94–10–060 | 02 |
| 06 | TX | HAYS COUNTY* | 4803210110B | 12/16/94 | R6–94–12–077 | 02 |
| 06 | TX | HEATH, CITY OF | 4805450005A | 10/12/94 | R6–94–10–000 | 02 |
| 06 | TX | HEATH, CITY OF | 4805450005A | 10/11/94 | R6–94–10–067 | 02 |
| 06 | TX | HEATH, CITY OF | 4805450005A | 12/05/94 | R6–94–10–258 | 02 |
| 06 | TX | HEATH, CITY OF | 4805450005A | 12/05/94 | R6–94–11–081 | 02 |
| 06 | TX | HEATH, CITY OF | 4805450005A | 12/16/94 | R6–94–12–059 | 02 |
| 06 | TX | HENDERSON COUNTY* | 48213C0045C | 10/26/94 | R6–94–10–187 | 02 |
| 06 | TX | HENDERSON COUNTY* | 48213C0045C | 12/01/94 | R6–94–11–234 | 02 |
| 06 | TX | HENDERSON COUNTY* | 48213C0150C | 12/01/94 | R6–94–11–235 | 02 |
| 06 | TX | HIDALGO COUNTY * | 4803340300C | 11/18/94 | 94–06–302C | 01 |
| 06 | TX | HOOD COUNTY* | 4803560145B | 10/07/94 | R6–94–09–156 | 02 |
| 06 | TX | HOUSTON, CITY OF | 48201C0145G | 10/04/94 | R6–94–10–015 | 02 |
| 06 | TX | HOUSTON, CITY OF | 48201C0145G | 12/09/94 | R6–94–12–048 | 02 |
| 06 | TX | HOUSTON, CITY OF | 48201C0270H | 12/29/94 | 94–06–377A | 01 |
| 06 | TX | HOUSTON, CITY OF | 48201C0275H | 12/29/94 | 94–06–377A | 01 |
| 06 | TX | HOUSTON, CITY OF | 48201C0370G | 10/11/94 | 94–06–110P | 05 |

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|---|---|---|---|---|---|---|
| 06 | TX | IRVING, CITY OF | 4801800035C | 10/25/94 | R6–94–10–166 | 02 |
| 06 | TX | IRVING, CITY OF | 4801800050C | 12/23/94 | 94–06–356P | 06 |
| 06 | TX | JOHNSON COUNTY* | 48251C0050G | 12/29/94 | R6–94–12–144 | 02 |
| 06 | TX | KENNEDALE, CITY OF | 48439C0231G | 12/30/94 | R6–94–12–203 | 02 |
| 06 | TX | KENNEDALE, CITY OF | 48439C0233G | 12/07/94 | R6–94–12–043 | 02 |
| 06 | TX | KERR COUNTY* | 4804190150B | 11/22/94 | R6–94–11–187 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310003C | 12/01/94 | R6–94–11–222 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310005B | 10/12/94 | R6–94–10–090 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310007B | 10/26/94 | R6–94–10–185 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310007B | 11/18/94 | R6–94–11–138 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310007B | 12/16/94 | R6–94–12–086 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310008B | 11/22/94 | R6–94–11–167 | 02 |
| 06 | TX | KILLEEN, CITY OF | 4800310008B | 10/26/94 | R6–94–10–204 | 02 |
| 06 | TX | LEWISVILLE, CITY OF | 4801950010D | 10/21/94 | 94–06–290A | 01 |
| 06 | TX | LEWISVILLE, CITY OF | 4801950020D | 12/30/94 | R6–94–12–186 | 02 |
| 06 | TX | LONGVIEW, CITY OF | 4802640015D | 12/19/94 | 94–06–355A | 01 |
| 06 | TX | LONGVIEW, CITY OF | 4802640015D | 12/19/94 | 95–06–022A | 01 |
| 06 | TX | LUBBOCK COUNTY* | 4809150010A | 10/27/94 | R6–94–10–233 | 02 |
| 06 | TX | LUBBOCK, CITY OF | 4804520025B | 11/28/94 | R6–94–11–197 | 02 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 10/11/94 | 94–06–374A | 02 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 10/03/94 | R6–94–10–017 | 02 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 10/04/94 | R6–94–10–026 | 01 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 10/04/94 | R6–94–10–027 | 01 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 12/16/94 | R6–94–12–000 | 01 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 12/02/94 | R6–94–12–009 | 01 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 12/16/94 | R6–94–12–110 | 02 |
| 06 | TX | LUBBOCK, CITY OF | 4804520045C | 12/29/94 | R6–94–12–161 | 01 |
| 06 | TX | MANSFIELD, CITY OF | 48439C0275G | 12/12/94 | 95–06–038A | 01 |
| 06 | TX | MANSFIELD, CITY OF | 48439C0275G | 10/03/94 | R6–94–10–016 | 02 |
| 06 | TX | MANSFIELD, CITY OF | 48439C0275G | 11/07/94 | R6–94–10–253 | 02 |
| 06 | TX | MCKINNEY, CITY OF | 48085C0255E | 12/01/94 | 94–06–342P | 06 |
| 06 | TX | MCKINNEY, CITY OF | 48085C0265E | 10/14/94 | 94–06–222P | 05 |
| 06 | TX | MCKINNEY, CITY OF | 48085C0270E | 10/13/94 | 94–06–265P | 05 |
| 06 | TX | MCKINNEY, CITY OF | 48085C0290F | 10/31/94 | 94–06–137P | 05 |
| 06 | TX | MESQUITE, CITY OF | 4854900005G | 10/11/94 | 94–06–060P | 05 |
| 06 | TX | MESQUITE, CITY OF | 4854900010E | 12/19/94 | 94–06–389A | 01 |
| 06 | TX | MESQUITE, CITY OF | 4854900010E | 11/28/94 | 94–06–390A | 01 |
| 06 | TX | MIDLAND COUNTY * | 48329C0101D | 10/25/94 | R6–94–10–171 | 01 |
| 06 | TX | MIDLAND, CITY OF | 48329C0082C | 12/16/94 | R6–94–12–105 | 01 |
| 06 | TX | MIDLAND, CITY OF | 48329C0101D | 12/06/94 | R6–94–12–038 | 02 |
| 06 | TX | MONTGOMERY COUNTY* | 4804830055C | 10/04/94 | 94–06–322A | 01 |
| 06 | TX | MONTGOMERY COUNTY* | 4804830170C | 10/04/94 | R6–94–10–013 | 02 |
| 06 | TX | MONTGOMERY COUNTY* | 4804830085C | 12/16/94 | R6–94–12–084 | 02 |
| 06 | TX | MONTGOMERY COUNTY* | 4804830160C | 12/30/94 | R6–94–12–185 | 02 |
| 06 | TX | MONTGOMERY COUNTY* | 4804830205E | 11/09/94 | 95–06–021A | 01 |
| 06 | TX | NORTH RICHLAND HILLS, CITY OF | 48439C0125G | 10/04/94 | R6–94–08–284 | 02 |
| 06 | TX | PLANO, CITY OF | 48085C0370E | 11/29/94 | 94–06–282P | 05 |
| 06 | TX | RICHARDSON, CITY OF | 4801840015C | 12/06/94 | R6–94–12–027 | 08 |
| 06 | TX | ROCKWALL, CITY OF | 4805470005C | 10/17/94 | R6–94–10–116 | 02 |
| 06 | TX | ROCKWALL, CITY OF | 4805470005C | 10/26/94 | R6–94–10–188 | 02 |
| 06 | TX | ROCKWALL, CITY OF | 4805470005C | 10/26/94 | R6–94–10–188 | 02 |
| 06 | TX | ROCKWALL, CITY OF | 4805470005C | 10/26/94 | R6–94–10–189 | 02 |
| 06 | TX | ROCKWALL, CITY OF | 4805470005C | 11/16/94 | R6–94–11–102 | 01 |
| 06 | TX | SAN ANTONIO, CITY OF | 4800450023D | 11/10/94 | R6–94–11–052 | 02 |
| 06 | TX | SMITH COUNTY * | 4811850250B | 11/08/94 | R6–94–11–024 | 02 |
| 06 | TX | SOUTH LAKE, CITY OF | 48439C0060G | 11/23/94 | 95–06–014A | 01 |
| 06 | TX | TRAVIS COUNTY* | 48453C0075E | 12/07/94 | R6–94–12–039 | 02 |
| 06 | TX | TRAVIS COUNTY* | 48453C0240E | 10/12/94 | 94–06–341P | 06 |
| 06 | TX | TRAVIS COUNTY* | 48453C0245E | 10/12/94 | 94–06–341P | 06 |
| 06 | TX | TRAVIS COUNTY* | 48453C0255E | 10/14/94 | R6–94–10–103 | 08 |
| 06 | TX | TRAVIS COUNTY* | 48453C0385E | 11/18/94 | R6–94–11–157 | 02 |
| 06 | TX | WILLIAMSON COUNTY* | 48491C0225C | 10/19/94 | 94–06–081P | 06 |
| 07 | IA | ANKENY, CITY OF | 1902260001B | 11/28/94 | 94–07–269A | 01 |
| 07 | IA | BETTENDORF, CITY OF | 1902400004D | 11/08/94 | | 08 |
| 07 | IA | BETTENDORF, CITY OF | 1902400005E | 10/03/94 | | 02 |
| 07 | IA | DAVENPORT, CITY OF | 1902420005B | 11/28/94 | 94–07–287A | 01 |
| 07 | IA | REMSEN, CITY OF | 190480 A | 12/28/94 | | 02 |
| 07 | IA | SPENCER, CITY OF | 1900710005B | 10/05/94 | | 02 |
| 07 | KS | ANDOVER, CITY OF | 2003830005B | 11/29/94 | 95–07–010A | 01 |
| 07 | KS | CLEARWATER, CITY OF | 2004820001A | 11/22/94 | | 02 |

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|---|---|---|---|---|---|---|
| 07 | KS | LINDSBORG, CITY OF | 2002150001B | 10/04/94 | 94–07–277A | 01 |
| 07 | KS | MANHATTAN, CITY OF | 2003000004D | 12/19/94 | 95–07–011A | 02 |
| 07 | KS | MCPHERSON, CITY OF | 2002170005D | 10/07/94 | 94–07–276A | 01 |
| 07 | KS | MCPHERSON, CITY OF | 2002170015D | 10/06/94 | | 02 |
| 07 | KS | MULVANE, CITY OF | 2003260010D | 11/10/94 | 95–07–001A | 02 |
| 07 | KS | NEWTON, CITY OF | 2001330005C | 11/22/94 | | 02 |
| 07 | KS | NEWTON, CITY OF | 2001330005C | 11/10/94 | 95–07–002A | 02 |
| 07 | KS | NEWTON, CITY OF | 2001330005C | 11/23/94 | 95–07–006A | 02 |
| 07 | KS | OLATHE, CITY OF | 20091C0069D | 10/25/94 | 94–07–284A | 02 |
| 07 | KS | OVERLAND PARK, CITY OF | 20091C0081D | 10/27/94 | | 02 |
| 07 | KS | OVERLAND PARK, CITY OF | 20091C0081D | 12/05/94 | 94–07–271P | 05 |
| 07 | KS | OVERLAND PARK, CITY OF | 20091C0082D | 12/05/94 | 94–07–271P | 05 |
| 07 | KS | SALINA, CITY OF | 2003190015B | 10/17/94 | | 02 |
| 07 | KS | SEDGWICK COUNTY* | 2003210150A | 11/02/94 | | 02 |
| 07 | KS | SEDGWICK COUNTY* | 2003210150A | 11/29/94 | | 01 |
| 07 | KS | SEDGWICK COUNTY* | 2003210200A | 10/20/94 | 94–07–222P | 06 |
| 07 | KS | SEDGWICK COUNTY* | 2003210225A | 10/06/94 | | 02 |
| 07 | KS | SEDGWICK COUNTY* | 2003210225A | 10/13/94 | | 02 |
| 07 | KS | SEDGWICK COUNTY* | 2003210225A | 11/29/94 | | 01 |
| 07 | KS | SEDGWICK COUNTY* | 2003210225A | 12/13/94 | | 02 |
| 07 | KS | SEDGWICK COUNTY* | 2003210225A | 10/12/94 | 94–07–280A | 01 |
| 07 | KS | SUMNER COUNTY* | 20191C0140B | 10/19/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280000 | 10/06/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280015B | 10/05/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280015B | 10/31/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280015B | 10/06/94 | 94–07–255P | 05 |
| 07 | KS | WICHITA, CITY OF | 2003280020B | 10/13/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280020B | 10/25/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280020B | 10/31/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280020B | 10/18/94 | 94–07–258P | 06 |
| 07 | KS | WICHITA, CITY OF | 2003280025B | 10/07/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280025B | 11/22/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280030B | 11/04/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280035B | 10/06/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280035B | 10/06/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280035B | 10/21/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280035B | 10/26/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280035B | 12/12/94 | | 02 |
| 07 | KS | WICHITA, CITY OF | 2003280035B | 12/12/94 | | 02 |
| 07 | KS | WINFIELD, CITY OF | 2000710003B | 10/24/94 | | 02 |
| 07 | MO | CAPE GIRARDEAU COUNTY* | 2907900090C | 12/28/94 | 94–07–285A | 02 |
| 07 | MO | JACKSON, CITY OF | 2952650001C | 11/29/94 | | 01 |
| 07 | MO | O'FALLON, CITY OF | 29183C0110D | 12/30/94 | 95–07–012A | 01 |
| 07 | MO | O'FALLON, CITY OF | 29183C0115D | 10/24/94 | 94–07–288A | 01 |
| 07 | MO | PECULIAR, CITY OF | 2908780001A | 12/28/94 | 95–07–017A | 02 |
| 07 | MO | ST. CHARLES COUNTY* | 29183C0115D | 11/23/94 | 95–07–008A | 01 |
| 07 | MO | ST. PETERS, CITY OF | 29183C0120D | 10/25/94 | 94–07–289A | 01 |
| 07 | MO | VALLEY PARK, CITY OF | 2903910001B | 11/16/94 | 94–07–151P | 05 |
| 07 | NE | BELLEVUE, CITY OF | 3101910010B | 10/21/94 | 94–07–286A | 02 |
| 07 | NE | CUMING COUNTY* | 3104270004A | 10/27/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030005B | 10/13/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030005B | 10/25/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030005B | 11/25/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030010B | 10/03/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030010B | 10/03/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030010B | 10/03/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030010B | 10/14/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030010B | 10/26/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030015B | 10/03/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030015B | 10/12/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030015B | 10/14/94 | | 01 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030015B | 10/14/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030015B | 10/14/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030015B | 10/28/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030020B | 10/03/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030020B | 10/03/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030020B | 10/04/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030020B | 10/17/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030020B | 10/24/94 | | 02 |
| 07 | NE | GRAND ISLAND, CITY OF | 3101030020B | 10/04/94 | 94–07–274A | 02 |

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| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 07 | NE | HALL COUNTY* | 3101000125B | 10/28/94 | | 02 |
| 07 | NE | LINCOLN, CITY OF | 3152730020C | 12/30/94 | 94–07–248P | 05 |
| 07 | NE | LINCOLN, CITY OF | 3152730025C | 12/30/94 | 94–07–248P | 05 |
| 07 | NE | LINCOLN, CITY OF | 3152730035C | 12/29/94 | 94–07–261P | 05 |
| 07 | NE | LINCOLN, CITY OF | 3152730040C | 12/29/94 | 94–07–261P | 05 |
| 07 | NE | OMAHA, CITY OF | 3152740025F | 10/13/94 | | 02 |
| 07 | NE | OMAHA, CITY OF | 3152740025F | 10/27/94 | 94–07–161A | 02 |
| 07 | NE | OMAHA, CITY OF | 3152740025F | 11/10/94 | 94–07–292A | 02 |
| 07 | NE | OMAHA, CITY OF | 3152740045F | 10/05/94 | | 02 |
| 07 | NE | OMAHA, CITY OF | 3152740045F | 11/28/94 | 94–07–223A | 01 |
| 08 | CO | BOULDER, CITY OF | 0800240120E | 12/01/94 | 94–08–196A | 02 |
| 08 | CO | CASTLE ROCK, TOWN OF | 0800500301C | 10/19/94 | 94–08–175A | 01 |
| 08 | CO | CASTLE ROCK, TOWN OF | 0800500302C | 11/21/94 | 94–08–115P | 05 |
| 08 | CO | COLORADO SPRINGS, CITY OF | 0800600134C | 10/20/94 | 94–08–161P | 05 |
| 08 | CO | DOUGLAS COUNTY* | 0800490070D | 10/20/94 | 94–08–191A | 01 |
| 08 | CO | DOUGLAS COUNTY* | 0800490435C | 11/18/94 | 93–08–140P | 05 |
| 08 | CO | GREELEY, CITY OF | 0801840002B | 11/23/94 | 94–08–032P | 05 |
| 08 | CO | JEFFERSON COUNTY* | 0800870430B | 11/02/94 | 94–08–141P | 05 |
| 08 | CO | JEFFERSON COUNTY* | 0800870440B | 11/02/94 | 94–08–141P | 05 |
| 08 | CO | LA PLATA COUNTY* | 0800970266B | 11/29/94 | 94–08–065P | 05 |
| 08 | CO | LA PLATA COUNTY* | 0800970267B | 11/29/94 | 94–08–065P | 05 |
| 08 | CO | LA PLATA COUNTY* | 0800970268B | 11/29/94 | 94–08–065P | 05 |
| 08 | CO | LA PLATA COUNTY* | 0800970269B | 11/29/94 | 94–08–065P | 05 |
| 08 | CO | LAKEWOOD, CITY OF | 0850750005C | 11/23/94 | 95–08–011A | 02 |
| 08 | CO | LAKEWOOD, CITY OF | 0850750005C | 12/19/94 | 95–08–030A | 02 |
| 08 | CO | LARKSPUR, TOWN OF | 0803090435A | 11/18/94 | 93–08–140P | 06 |
| 08 | CO | LYONS, TOWN OF | 0800290001B | 11/17/94 | 95–08–021A | 01 |
| 08 | CO | WELD COUNTY* | 0802660636C | 11/23/94 | 94–08–032P | 05 |
| 08 | CO | WELD COUNTY* | 0802660637C | 11/23/94 | 94–08–032P | 05 |
| 08 | CO | WELD COUNTY* | 0802660638C | 11/23/94 | 94–08–032P | 05 |
| 08 | MT | BEAVERHEAD COUNTY* | 3000011438A | 11/02/94 | 95–08–014A | 02 |
| 08 | MT | CARBON COUNTY* | 3001390195B | 12/19/94 | 95–08–043A | 01 |
| 08 | MT | CASCADE COUNTY* | 3000080406B | 12/28/94 | 95–08–037A | 02 |
| 08 | MT | KALISPELL, CITY OF | 3000250005C | 10/13/94 | 94–08–187A | 01 |
| 08 | MT | MISSOULA, CITY OF | 30063C1195D | 12/01/94 | 95–08–006A | 01 |
| 08 | ND | BURLEIGH COUNTY* | 3800170560A | 11/23/94 | 94–08–197A | 02 |
| 08 | ND | GRAND FORKS, CITY OF | 3853650010D | 10/13/94 | 94–08–190A | 02 |
| 08 | ND | GRAND FORKS, CITY OF | 3853650010D | 10/14/94 | 94–08–192A | 02 |
| 08 | ND | GRAND FORKS, CITY OF | 3853650010D | 10/26/94 | 94–08–200A | 02 |
| 08 | ND | GRAND FORKS, CITY OF | 3853650010D | 11/04/94 | 95–08–002A | 02 |
| 08 | ND | GRAND FORKS, CITY OF | 3853650010D | 11/10/94 | 95–08–016A | 02 |
| 08 | ND | GRAND FORKS, CITY OF | 3853650010D | 12/21/94 | 95–08–029A | 01 |
| 08 | ND | MANDAN, CITY OF | 3800720020B | 10/20/94 | 94–08–189A | 02 |
| 08 | ND | VALLEY CITY, CITY OF | 3800020002E | 12/28/94 | 95–08–034A | 02 |
| 08 | SD | NORTH SIOUX CITY, CITY OF | 4600870005C | 10/13/94 | 94–08–183A | 02 |
| 08 | SD | NORTH SIOUX CITY, CITY OF | 4600870005C | 11/10/94 | 94–08–195A | 02 |
| 08 | SD | NORTH SIOUX CITY, CITY OF | 4600870005C | 12/28/94 | 95–08–048A | 01 |
| 08 | SD | RAPID CITY, CITY OF | 4654200004E | 11/10/94 | 95–08–013A | 02 |
| 08 | SD | RAPID CITY, CITY OF | 4654200005D | 11/02/94 | 94–08–173A | 02 |
| 08 | SD | SIOUX FALLS, CITY OF | 4600600015C | 10/17/94 | 94–08–179A | 01 |
| 08 | UT | MURRAY, CITY OF | 4901030001C | 11/01/94 | 94–08–162P | 05 |
| 08 | UT | SALT LAKE COUNTY* | 4901020291B | 11/01/94 | 94–08–162P | 05 |
| 08 | UT | SALT LAKE COUNTY* | 4901020317B | 10/06/94 | 94–08–167A | 08 |
| 08 | UT | SALT LAKE COUNTY* | 4901020425B | 12/13/94 | 95–08–001P | 06 |
| 08 | UT | SALT LAKE COUNTY* | 4901020450B | 12/13/94 | 95–08–001P | 06 |
| 08 | UT | SOUTH JORDAN, CITY OF | 4901070009C | 12/15/94 | 95–08–023A | 02 |
| 08 | UT | SOUTH JORDAN, CITY OF | 4901070009C | 12/06/94 | 95–08–026A | 02 |
| 08 | UT | SOUTH JORDAN, CITY OF | 4901070009C | 12/06/94 | 95–08–027A | 02 |
| 08 | UT | SOUTH JORDAN, CITY OF | 4901070009C | 12/21/94 | 95–08–045A | 02 |
| 08 | WY | CASER, CITY OF | 5600370015C | 11/23/94 | 95–08–010A | 02 |
| 09 | AZ | CHANDLER, CITY OF | 04013C2630D | 10/27/94 | 94–09–886A | 01 |
| 09 | AZ | GILA COUNTY * | 0400280065B | 12/07/94 | 94–09–921A | 01 |
| 09 | AZ | GILBERT, TOWN OF | 04013C2660E | 11/10/94 | 95–09–029A | 01 |
| 09 | AZ | GILBERT, TOWN OF | 04013C2680F | 12/21/94 | 95–09–113A | 01 |
| 09 | AZ | GLENDALE, CITY OF | 04013C1190F | 11/17/94 | 95–09–068A | 01 |
| 09 | AZ | MESA, CITY OF | 04013C2185E | 11/02/94 | 94–09–897A | 08 |
| 09 | AZ | MESA, CITY OF | 04013C2185E | 12/29/94 | 95–09–157A | 01 |
| 09 | AZ | MESA, CITY OF | 04013C2190E | 11/23/94 | 95–09–086A | 01 |
| 09 | AZ | MESA, CITY OF | 04013C2195E | 10/11/94 | 94–09–884A | 01 |
| 09 | AZ | MESA, CITY OF | 04013C2195E | 10/27/94 | 94–09–907A | 01 |

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| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 09 | AZ | PHOENIX, CITY OF | 04013C1195D | 12/28/94 | 95–09–048A | 17 |
| 09 | AZ | PHOENIX, CITY OF | 04013C1195D | 12/01/94 | 95–09–081A | 01 |
| 09 | AZ | PHOENIX, CITY OF | 04013C1220F | 12/12/94 | 95–09–073P | 06 |
| 09 | AZ | PHOENIX, CITY OF | 04013C1240E | 12/12/94 | 95–09–073P | 06 |
| 09 | AZ | PHOENIX, CITY OF | 04013C1245E | 12/12/94 | 95–09–073P | 06 |
| 09 | AZ | PHOENIX, CITY OF | 04013C1660E | 11/02/94 | 94–09–839A | 17 |
| 09 | AZ | PHOENIX, CITY OF | 04013C1670D | 12/15/94 | 95–09–096A | 01 |
| 09 | AZ | PHOENIX, CITY OF | 04013C2130E | 11/08/94 | 95–09–019A | 08 |
| 09 | AZ | PHOENIX, CITY OF | 04013C2155D | 12/28/94 | 95–09–107A | 02 |
| 09 | AZ | PHOENIX, CITY OF | 04013C2155D | 12/29/94 | 95–09–124A | 02 |
| 09 | AZ | PINETOP-LAKESIDE, TOWN OF | 0401270005C | 12/29/94 | 94–09–899A | 02 |
| 09 | AZ | SCOTTSDALE, CITY OF | 04013C1245E | 12/12/94 | 95–09–022P | 06 |
| 09 | AZ | TEMPE, CITY OF | 04013C2630D | 10/06/94 | 94–09–867A | 01 |
| 09 | AZ | TUCSON, CITY OF | 0400760030G | 12/21/94 | 95–09–117A | 02 |
| 09 | AZ | YAVAPAI COUNTY* | 0400931020B | 12/28/94 | 95–09–139A | 02 |
| 09 | CA | ANTIOCH, CITY OF | 0600260006D | 12/14/94 | 94–09–697P | 06 |
| 09 | CA | BREA, CITY OF | 06059C0002E | 11/08/94 | 94–09–280P | 05 |
| 09 | CA | BURLINGAME, CITY OF | 0650190002C | 12/06/94 | 95–09–106A | 02 |
| 09 | CA | CARLSBAD, CITY OF | 0602850015D | 11/10/94 | 95–09–005A | 01 |
| 09 | CA | CONCORD, CITY OF | 0650220009B | 12/28/94 | 95–09–131A | 02 |
| 09 | CA | CONTRA COSTA COUNTY* | 0600250355B | 12/14/94 | 94–09–697P | 06 |
| 09 | CA | CONTRA COSTA COUNTY* | 0600250435B | 12/27/94 | 95–09–144A | 02 |
| 09 | CA | CORONA, CITY OF | 0602500005E | 11/09/94 | 94–09–594P | 05 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–820A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–822A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–823A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–824A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–825A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–845A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–846A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–847A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–848A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–849A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–850A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/05/94 | 94–09–851A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/07/94 | 94–09–876A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/07/94 | 94–09–877A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/07/94 | 94–09–878A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/11/94 | 94–09–879A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/07/94 | 94–09–880A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/07/94 | 94–09–881A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/20/94 | 94–09–916A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/20/94 | 94–09–917A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/25/94 | 94–09–918A | 02 |
| 09 | CA | COSTA MESA, CITY OF | 06059C0038E | 10/20/94 | 94–09–919A | 02 |
| 09 | CA | COTATI, CITY OF | 0603770001C | 10/20/94 | 94–09–902A | 01 |
| 09 | CA | COTATI, CITY OF | 0603770001C | 10/25/94 | 94–09–912A | 02 |
| 09 | CA | DAVIS, CITY OF | 0604230575B | 12/06/94 | 94–09–589A | 01 |
| 09 | CA | DEL NORTE COUNTY* | 0650250025B | 10/28/94 | 95–09–011A | 02 |
| 09 | CA | EL PASO DE ROBLES, CITY OF | 0603080004B | 11/22/94 | 95–09–017A | 01 |
| 09 | CA | ESCONDIDO, CITY OF | 0602900008B | 12/21/94 | 95–09–128A | 08 |
| 09 | CA | FAIRFIELD, CITY OF | 0603700006C | 12/05/94 | 95–09–010P | 05 |
| 09 | CA | FOLSOM, CITY OF | 0602630004C | 11/18/94 | 94–09–828P | 05 |
| 09 | CA | FREMONT, CITY OF | 0650280004B | 10/25/94 | 94–09–906A | 01 |
| 09 | CA | FRESNO COUNTY * | 0650291400B | 12/01/94 | 94–09–913A | 02 |
| 09 | CA | FRESNO COUNTY* | 0650290880B | 12/15/94 | 94–09–097A | 01 |
| 09 | CA | FRESNO, CITY OF | 0600480010C | 10/21/94 | 95–09–013A | 01 |
| 09 | CA | FRESNO, CITY OF | 0600480010C | 10/21/94 | 95–09–013A | 01 |
| 09 | CA | HEMET, CITY OF | 0602530005C | 10/11/94 | 94–09–735A | 02 |
| 09 | CA | HEMET, CITY OF | 0602530005C | 11/15/94 | 95–09–077A | 01 |
| 09 | CA | HEMET, CITY OF | 0602530005C | 12/06/94 | 95–09–093A | 01 |
| 09 | CA | KERN COUNTY | 0600751825B | 12/09/94 | 95–09–033A | 02 |
| 09 | CA | LA QUINTA, CITY OF | 0607090005B | 10/14/94 | 94–09–808A | 01 |
| 09 | CA | LOS ANGELES COUNTY* | 0650430757B | 11/18/94 | 94–09–552P | 05 |
| 09 | CA | MADERA COUNTY* | 0601700750B | 11/02/94 | 94–09–654A | 01 |
| 09 | CA | MENDOCINO COUNTY* | 0601830600B | 11/10/94 | 95–09–023A | 02 |
| 09 | CA | MENDOCINO COUNTY* | 0601830803B | 10/25/94 | 95–09–037A | 01 |
| 09 | CA | MENDOCINO COUNTY* | 0601830811B | 10/25/94 | 95–09–037A | 01 |
| 09 | CA | MENLO PARK, CITY OF | 0603210008C | 12/06/94 | 95–09–095A | 01 |
| 09 | CA | MERCED COUNTY* | 0601880295C | 12/15/94 | 95–09–111A | 06 |

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| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 09 | CA | MERCED, CITY OF | 0601910005D | 12/01/94 | 95–09–047A | 01 |
| 09 | CA | MISSION VIEJO, CITY OF | 06059C0065F | 12/28/94 | 94–09–496P | 06 |
| 09 | CA | MONTEREY COUNTY* | 0601950055F | 12/29/94 | 95–09–123A | 02 |
| 09 | CA | MONTEREY COUNTY* | 0601950325D | 11/23/94 | 95–09–071A | 02 |
| 09 | CA | MOORPARK, CITY OF | 0607120005A | 12/28/94 | 94–09–213P | 05 |
| 09 | CA | NORCO, CITY OF | 0602560003B | 11/09/94 | 94–09–594P | 05 |
| 09 | CA | NOVATO, CITY OF | 0601780002C | 12/20/94 | 95–09–075A | 01 |
| 09 | CA | OCEANSIDE, CITY OF | 0602940003C | 10/13/94 | 94–09–894A | 01 |
| 09 | CA | OCEANSIDE, CITY OF | 0602940003C | 12/01/94 | 95–09–083A | 01 |
| 09 | CA | OCEANSIDE, CITY OF | 0602940014C | 11/15/94 | 95–09–045A | 01 |
| 09 | CA | OCEANSIDE, CITY OF | 0602940014C | 12/01/94 | 95–09–046A | 08 |
| 09 | CA | ORANGE COUNTY* | 06059C0031E | 10/20/94 | 94–09–816P | 06 |
| 09 | CA | ORANGE COUNTY* | 06059C0040E | 10/20/94 | 94–09–816P | 06 |
| 09 | CA | ORANGE COUNTY* | 06059C0065F | 12/28/94 | 94–09–496P | 06 |
| 09 | CA | OXNARD, CITY OF | 0604170015C | 11/03/94 | 94–09–898A | 01 |
| 09 | CA | PALM SPRINGS, CITY OF | 0602570006B | 11/08/94 | 94–09–068P | 06 |
| 09 | CA | PALM SPRINGS, CITY OF | 0602570008B | 11/08/94 | 94–09–068P | 06 |
| 09 | CA | PLEASANTON, CITY OF | 0600120003D | 11/10/94 | 94–09–895A | 02 |
| 09 | CA | PLEASANTON, CITY OF | 0600120003D | 11/08/94 | 94–09–904A | 02 |
| 09 | CA | PLEASANTON, CITY OF | 0600120003D | 11/18/94 | 95–09–020A | 08 |
| 09 | CA | PLEASANTON, CITY OF | 0600120003D | 11/15/94 | 95–09–074A | 02 |
| 09 | CA | PLEASANTON, CITY OF | 0600120003D | 12/28/94 | 95–09–120A | 02 |
| 09 | CA | PORTERVILLE, CITY OF | 0650660845B | 12/01/94 | 95–09–042A | 01 |
| 09 | CA | REDDING, CITY OF | 0603600025C | 11/15/94 | 95–09–061A | 02 |
| 09 | CA | REDDING, CITY OF | 0603600025C | 12/06/94 | 95–09–098A | 02 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620055D | 10/14/94 | 94–09–819A | 02 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620060C | 10/25/94 | 94–09–922A | 01 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620065E | 11/10/94 | 95–09–041A | 01 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620070C | 12/21/94 | 95–09–049A | 02 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620090D | 10/13/94 | 94–09–885A | 02 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620095D | 10/19/94 | 95–09–007A | 02 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620210D | 10/27/94 | 94–09–910A | 01 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620315C | 11/23/94 | 94–09–782P | 06 |
| 09 | CA | SACRAMENTO COUNTY* | 0602620320D | 11/04/94 | 94–09–887A | 02 |
| 09 | CA | SACRAMENTO, CITY OF | 0602660015E | 11/17/94 | 94–09–863A | 01 |
| 09 | CA | SACRAMENTO, CITY OF | 0602660015E | 11/15/94 | 95–09–057A | 02 |
| 09 | CA | SACRAMENTO, CITY OF | 0602660015E | 12/21/94 | 95–09–108A | 01 |
| 09 | CA | SALINAS, CITY OF | 0602020003D | 10/05/94 | 94–09–526A | 01 |
| 09 | CA | SAN DIEGO, CITY OF | 0602950163C | 12/28/94 | 94–09–920A | 02 |
| 09 | CA | SAN JOSE, CITY OF | 0603490009F | 12/06/94 | 95–09–087A | 02 |
| 09 | CA | SAN JOSE, CITY OF | 0603490037D | 11/02/94 | 95–09–006A | 02 |
| 09 | CA | SAN JOSE, CITY OF | 0603490042D | 10/05/94 | 94–09–892A | 01 |
| 09 | CA | SAN RAFAEL, CITY OF | 0650580015B | 12/28/94 | 95–09–110A | 02 |
| 09 | CA | SAN RAFAEL, CITY OF | 0650580020B | 11/02/94 | 95–09–034A | 08 |
| 09 | CA | SANTA ANA, CITY OF | 06059C0029E | 10/26/94 | 94–09–861A | 08 |
| 09 | CA | SANTA ANA, CITY OF | 06059C0029E | 11/02/94 | 94–09–883A | 02 |
| 09 | CA | SANTA BARBARA, CITY OF | 0603350004D | 11/04/94 | 95–09–021A | 02 |
| 09 | CA | SANTA BARBARA, CITY OF | 0603350005D | 11/02/94 | 95–09–004A | 02 |
| 09 | CA | SANTA ROSA, CITY OF | 0603810000 | 12/08/94 | 95–09–054P | 06 |
| 09 | CA | SANTEE, CITY OF | 0607030004B | 12/29/94 | 95–09–119A | 02 |
| 09 | CA | SHASTA COUNTY* | 0603580405B | 10/28/94 | 94–09–581P | 05 |
| 09 | CA | SHASTA COUNTY* | 0603580705B | 11/23/94 | 95–09–066A | 02 |
| 09 | CA | SIMI VALLEY, CITY OF | 0604210006A | 10/05/94 | 94–09–730A | 08 |
| 09 | CA | SIMI VALLEY, CITY OF | 0604210006A | 10/05/94 | 94–09–862A | 02 |
| 09 | CA | SIMI VALLEY, CITY OF | 0604210006A | 11/10/94 | 94–09–896A | 02 |
| 09 | CA | SIMI VALLEY, CITY OF | 0604210006A | 12/07/94 | 94–09–908A | 02 |
| 09 | CA | SIMI VALLEY, CITY OF | 0604210008A | 11/02/94 | 94–09–890A | 02 |
| 09 | CA | SIMI VALLEY, CITY OF | 0604210009A | 12/19/94 | 95–09–100A | 02 |
| 09 | CA | SOLANO COUNTY* | 0606310262C | 12/05/94 | 95–09–010P | 05 |
| 09 | CA | SOLANO COUNTY* | 0606310263C | 12/05/94 | 95–09–010P | 05 |
| 09 | CA | SOLANO COUNTY* | 0606310275C | 12/05/94 | 95–09–010P | 05 |
| 09 | CA | SOUTH LAKE TAHOE, CITY OF | 0650600010B | 11/10/94 | 95–09–030A | 02 |
| 09 | CA | SUNNYVALE, CITY OF | 0603520001C | 12/06/94 | 94–09–905A | 02 |
| 09 | CA | TEHAMA COUNTY* | 0650640675B | 12/01/94 | 94–09–763A | 02 |
| 09 | CA | THOUSAND OAKS, CITY OF | 0604220015B | 11/04/94 | 95–09–032A | 02 |
| 09 | CA | TULARE COUNTY* | 0650660465B | 11/03/94 | 95–09–036A | 01 |
| 09 | CA | TUSTIN, CITY OF | 06059C0039E | 10/13/94 | 94–09–736A | 02 |
| 09 | CA | TUSTIN, CITY OF | 06059C0039E | 12/28/94 | 95–09–053A | 02 |
| 09 | CA | UKIAH, CITY OF | 0601860001E | 12/06/94 | 95–09–084A | 08 |
| 09 | CA | UNION CITY, CITY OF | 0600140010B | 10/05/94 | 94–09–837A | 01 |

LETTERS OF MAP CHANGE—Continued

[Effective October 1, 1994 through December 31, 1994]

| Region | State | Community | Map panel number | Effective date | Case number | Determination |
|---|---|---|---|---|---|---|
| 09 | CA | UNION CITY, CITY OF | 0600140010B | 11/30/94 | 95–09–025A | 01 |
| 09 | CA | VACAVILLE, CITY OF | 0603730004B | 12/28/94 | 94–09–549P | 06 |
| 09 | CA | VACAVILLE, CITY OF | 0603730005B | 12/28/94 | 94–09–549P | 06 |
| 09 | CA | VALLEJO, CITY OF | 0603740005C | 12/27/94 | 95–09–112A | 01 |
| 09 | CA | VENTURA COUNTY* | 0604130795B | 12/28/94 | 94–09–213P | 05 |
| 09 | CA | VISALIA, CITY OF | 0604090005C | 12/01/94 | 95–09–063A | 01 |
| 09 | CA | YOLO COUNTY* | 0604230386B | 10/05/94 | 94–09–777A | 01 |
| 09 | CA | YUBA COUNTY* | 0604270360B | 12/27/94 | 95–09–102A | 02 |
| 09 | HI | HONOLULU COUNTY* | 1500010100C | 12/08/94 | 95–09–101P | 06 |
| 09 | HI | HONOLULU COUNTY* | 1500010130C | 10/21/94 | 94–09–628P | 05 |
| 09 | HI | MAUI COUNTY* | 1500030190C | 12/01/94 | 95–09–056A | 02 |
| 09 | NV | CLARK COUNTY* | 3200031250B | 11/11/94 | 94–09–605P | 06 |
| 09 | NV | CLARK COUNTY* | 3200031250B | 10/19/94 | 94–09–713P | 06 |
| 09 | NV | CLARK COUNTY* | 3200031250B | 12/12/94 | 95–09–080A | 02 |
| 09 | NV | HENDERSON, CITY OF | 3200050005B | 10/19/94 | 94–09–713P | 06 |
| 09 | NV | HENDERSON, CITY OF | 3200050025B | 11/10/94 | 95–09–024A | 01 |
| 09 | NV | LAS VEGAS, CITY OF | 3252760015C | 11/10/94 | 94–09–889A | 01 |
| 09 | NV | LAS VEGAS, CITY OF | 3252760015C | 11/15/94 | 94–09–901A | 01 |
| 09 | NV | NORTH LAS VEGAS, CITY OF | 3200070006C | 10/05/94 | 94–09–882A | 02 |
| 09 | NV | NORTH LAS VEGAS, CITY OF | 3200070006C | 10/20/94 | 95–09–001A | 02 |
| 09 | NV | NORTH LAS VEGAS, CITY OF | 3200070006C | 11/10/94 | 95–09–027A | 02 |
| 09 | NV | NORTH LAS VEGAS, CITY OF | 3200070006C | 11/10/94 | 95–09–060A | 02 |
| 09 | NV | RENO, CITY OF | 32031C3176E | 10/19/94 | 94–09–780A | 01 |
| 09 | NV | WASHOE COUNTY* | 32031C3158E | 10/13/94 | 94–09–747A | 02 |
| 09 | NV | WASHOE COUNTY* | 32031C3250E | 10/06/94 | 94–09–788A | 02 |
| 10 | ID | BOISE, CITY OF | 1600010285C | 11/03/94 | 94–10–064A | 01 |
| 10 | ID | GARDEN CITY, CITY OF | 1600040170C | 10/26/94 | 94–10–057A | 01 |
| 10 | ID | GARDEN CITY, CITY OF | 1600040170C | 12/06/94 | 94–10–013A | 01 |
| 10 | ID | SUGAR CITY, CITY OF | 16065C0010D | 12/29/94 | 95–10–020P | 06 |
| 10 | ID | SUGAR CITY, CITY OF | 16065C0030D | 12/29/94 | 95–10–020P | 06 |
| 10 | ID | WEISER, CITY OF | 1601240005B | 10/25/94 | 94–10–070A | 02 |
| 10 | OR | COOS COUNTY* | 1601240005B | 10/25/94 | 94–10–070A | 02 |
| 10 | OR | CRESWELL, CITY OF | 4101210001A | 11/10/94 | 95–10–001A | 01 |
| 10 | OR | HILLSBORO, CITY OF | 4102380343B | 12/12/94 | 94–10–054P | 06 |
| 10 | OR | LANE COUNTY* | 4155910640E | 10/12/94 | 94–RX–0223 | 02 |
| 10 | OR | LANE COUNTY* | 4155910350C | 11/02/94 | 94–10–069A | 02 |
| 10 | OR | LANE COUNTY* | 4155910025C | 12/29/94 | 95–R10–23 | 02 |
| 10 | OR | LANE COUNTY* | 4155910350C | 11/02/94 | 94–10–069A | |
| 10 | OR | LEBANON, CITY OF | 4101410001C | 10/07/94 | 94–RX–0211 | 02 |
| 10 | OR | LINN COUNTY* | 4101360190B | 12$^{07}$94 | 95–R10–014 | 02 |
| 10 | OR | LINN COUNTY* | 410136 | 12$^{15}$94 | RX–218–70–0 | 02 |
| 10 | OR | MULTNOMAH COUNTY* | 4101790238A | 12/01/94 | 95–R10–013 | 02 |
| 10 | OR | NORTH BEND, CITY OF | 4100480002B | 10/06/94 | 94–RX–0189 | 01 |
| 10 | OR | POLK COUNTY* | 41053C0140C | 11/30/94 | 95–R10–011 | 02 |
| 10 | OR | RAINIER, CITY OF | 41009C0180C | 11/23/94 | 95–10–004A | 01 |
| 10 | OR | TILLAMOOK COUNTY* | 4101960000 | 10/07/94 | 94–RX–0209 | 08 |
| 10 | OR | WASHINGTON COUNTY* | 4102380343B | 12/12/94 | 94–10–054P | 06 |
| 10 | WA | BONNEY LAKE, CITY OF | 5302740001A | 11/17/94 | 94–10–056P | 05 |
| 10 | WA | BONNEY LAKE, CITY OF | 5302740002A | 11/17/94 | 94–10–056P | 05 |
| 10 | WA | CLARK COUNTY* | 5300240000 | 10/04/94 | 94–RX–0215 | 02 |
| 10 | WA | CLARK COUNTY* | 5300240314B | 12/29/94 | 95–R10–24 | 02 |
| 10 | WA | GRAYS HARBOR COUNTY* | 5300570510B | 12/01/94 | 95–R10–012 | 02 |
| 10 | WA | ISSAQUAH, CITY OF | 53033C0194D | 10/11/94 | 94–10–063A | 02 |
| 10 | WA | KING COUNTY* | 53033C0215D | 11/04/94 | 94–RX–0229 | 02 |
| 10 | WA | KING COUNTY* | 53033C0216D | 11/04/94 | 94–RX–0229 | 02 |
| 10 | WA | KING COUNTY* | 53033C0345D | 12/29/94 | 95–10–009A | 02 |
| 10 | WA | MOUNTLAKE TERRACE, CITY OF | 5301700005C | 10/07/94 | 94–RX–0224 | 02 |
| 10 | WA | OLYMPIA, CITY OF | 5301910003B | 10/05/94 | 94–RX–0201 | 02 |
| 10 | WA | SPOKANE, CITY OF | 530183 | 10/28/94 | 94–RX–0229 | 0 |
| 10 | WA | THURSTON COUNTY* | 530188C | 10/17/94 | 94–RX–0226 | 0 |
| 10 | WA | THURSTON COUNTY* | 530188C | 10/18/94 | 94–RX–0222 | 0 |
| 10 | WA | THURSTON COUNTY* | 5301880430C | 12/05/94 | 94–10–031P | 06 |
| 10 | WA | THURSTON COUNTY* | 5301880435C | 12/05/94 | 94–10–031P | 06 |
| 10 | WA | THURSTON COUNTY* | 5301880440C | 12/05/94 | 94–10–031P | 06 |
| 10 | WA | THURSTON COUNTY* | 5301880445C | 12/05/94 | 94–10–031P | 06 |
| 10 | WA | WAHKIAKUM COUNTY* | 5301930C | 10/27/94 | 94–RX–0198 | 0 |
| 10 | WA | WHATCOM COUNTY* | 530198 | 12/27/94 | 95–R10–021 | 02 |

*Unincorporated areas only.

Determination type and description

01 218–65 Fill involved
02 218–70 No fill involved
05 102 BFE change
06 102A No BFE change
08 Denial
12 Floodway Revision
17 218–65 Inadvertent inclusion in floodway
18 218–65 Inadvertent inclusion in V-Zone

[FR Doc. 95–3118 Filed 2–7–95; 8:45 am]

BILLING CODE 6718–03–P

## Open Meeting; Conference on Criteria for National Fallen Firefighters' Memorial

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of Open Meeting.

**SUMMARY:** The United States Fire Administration (USFA) is conducting a meeting to review the criteria to determine eligibility for inclusion in the National Fallen Firefighters' Memorial. Representatives from federal agencies and fire service organizations have been invited to attend.

**NAME:** Conference on Criteria for National Fallen Firefighters' Memorial.

**DATE OF MEETING:** February 24, 1995.

**TIME:** 9:00 AM–5:00 PM.

**PLACE:** National Emergency Training Center, Building N, Room 309, Emmitsburg, Maryland.

**PROPOSED AGENDA:** AM—Welcome and Introductions of participants; overview of current programs in this area; large group discussion. PM—Workgroups; Large group session to develop summary.

**SUPPLEMENTARY INFORMATION:** USFA has the responsibility under the Federal Fire Prevention and Control Act, as amended, 15 U.S.C. 2201 et seq., for the ongoing operation of the National Fallen Firefighters' Memorial, which is located on the campus of the National Fire Academy at Emmitsburg, Maryland. The principal activity associated with the Memorial is the annual Fallen Firefighters' Memorial Service. Working with the help of interested fire service organizations, USFA established formal criteria with which fire service personnel are identified for inclusion in the Memorial and the Memorial Service. The purpose of the February 24 meeting is to review those criteria.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of Program Coordination and Data Analysis, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, or telephone (301)447–1350, by February 15, 1995.

Dated: February 2, 1995.

**Carrye B. Brown,**

*U.S. Fire Administrator.*

[FR Doc. 95–3119 Filed 2–7–95; 8:45 am]

BILLING CODE 6718–26–P

# FEDERAL MARITIME COMMISSION

## Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Jet Logistics International Inc., 4232 Artesia Blvd., Torrance, CA 90504–3100, Officers: Sandra L. Rowe, President, David Rowe, Vice President

Amerstar Shipping Incorporated, Varet & Fink P.C., New York, NY 10005–2899, Officers: Belford Saltos, President, Madukwe E. Ukaegbu, Secretary

Romi's Express, Inc., 420 S. Hindry Ave., Unit F, Inglewood, CA 90301, Officers: Rosalba Gil, President, Isabel C. Montego, Vice President.

Dated: February 2, 1995.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95–3031 Filed 2–7–95; 8:45 am]

BILLING CODE 6730–01–M

# FEDERAL RESERVE SYSTEM

## ISB Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank of Atlanta or the offices of the Board of Governors not later than February 22, 1995.

*1. ISB Financial Corporation*, New Iberia, Louisiana; to acquire through its subsidiary Iberia Saving Bank, New Iberia, Louisiana, Iberia Financial Services, Inc., New Iberia, Louisiana, and thereby engage in securities brokerage activities and providing general portfolio investment advice pursuant to §§ 225.25(b)(4) and (15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 2, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–3094 Filed 2–7–95; 8:45 am]

BILLING CODE 6210–01–F

## North Fork Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1995.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

*1. North Fork Bancorporation, Inc.*, Mattituck, New York; to acquire up to 9.9 percent of the outstanding common stock of Sunrise Bancorp, Inc., Farmingdale, New York, and thereby indirectly acquire an interest in Sunrise's wholly-owned federal savings bank subsidiary, Sunrise Federal Savings Bank, Farmingdale, New York, and its subsidiary, Paumanok Service Corp., Farmingdale, New York, and thereby engage in securities brokerage activities, pursuant to §§ 225.25(b)(9) and (15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 2, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–3095 Filed 2–7–95; 8:45 am]

BILLING CODE 6210–01–F

## Norwest Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-2055) published on page 5396 and 5397 of the issue for Friday, January 27, 1995.

Under the Federal Reserve Bank of Minneapolis heading, the entries for Norwest Corporation, are revised to read as follows:

*1. Norwest Corporation*, Minneapolis, Minnesota; to acquire Stan-Shaw Corporation, Anaheim Hills, California, and thereby engage in acting as trustee under deeds of trust, preparing and filing notices of default, reconveyances and related documents, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

*2. Norwest Corporation*, Minneapolis, Minnesota; to acquire Directors Mortgage Loan Corporation, Riverside, California, and thereby engage in (1) the origination, sale and servicing of residential single-family, first mortgage loans, the retention, purchase and sale of servicing rights associates with such mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and (2) the acquisition of 24.6 percent of Mission Savings and Loan Association, Riverside, California, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

*3. Norwest Corporation*, Minneapolis, Minnesota; to acquire Directors Insurance Service, Riverside, California, and thereby engage in (1) providing, as agent for various insurance underwriters, a full line of home mortgage insurance products, including mortgage life, flood, and earthquake insurance, pursuant to section 4(c)(8)(G) of the Bank Holding Company Act.

Comments on this application must be received by February 13, 1995.

Board of Governors of the Federal Reserve System, February 2, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–3096 Filed 2–7–95; 8:45 am]

BILLING CODE 6210–01–F

## Royal Bancshares of Pennsylvania, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 3, 1995.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Royal Bancshares of Pennsylvania, Inc.*, Narberth, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Royal Bank of Pennsylvania, Narberth, Pennsylvania.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. First Citizens BancShares, Inc.*, Raleigh, North Carolina; to merge with Old White Bankshares, Incorporated, White Sulphur Springs, West Virginia, and thereby indirectly acquire Bank of White Sulphur Springs, White Sulphur Springs, West Virginia.

**C. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. First Commercial Financial Corp.*, Seguin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Commercial Bank, N.A., Seguin, Texas.

*2. T&A Bancshares, Inc.*, Texarkana, Texas; to become a bank holding company by acquiring 50.92 percent of the voting shares of New Boston Bancshares, Inc., New Boston, Texas, and thereby indirectly acquire The First National Bank of New Boston, New Boston, Texas.

Board of Governors of the Federal Reserve System, February 2, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–3097 Filed 2–7–95; 8:45 am]

BILLING CODE 6210–01–F

## Whitewater Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Whitewater Bancorp, Inc.*, Whitewater, Wisconsin; to engage *de novo* in the purchasing of loan participations and the making of direct loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 2, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–3098 Filed 2–7–95; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1995

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of January 1995. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since January 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

**COMMENTS:** We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

**ADDRESSES:** For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

### II. Listing of New and Pending Proposals for the Month of January, 1994

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of January, 1994.

*Waiver Title:* Arizona—Employing and Moving People Off Welfare and Encouraging Responsibility Program.

*Description:* Would not increase benefits for additional children conceived while receiving AFDC; limit benefits to adults to 24 months in any 60 month period; allow recipients to deposit up to $200/month (with 50% disregarded) in Individual Development Accounts; require minor mothers to live with parents; extend Transitional Child Care and Medicaid to 24 months and eliminate the 100-hour rule for AFDC–U cases. Also, in a pilot site, would provide individuals with short-term subsidized public or private OJT subsidized by grant diversion which includes cashing-out Food Stamps.

*Date Received:* 8/3/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Gail A. Parin, (602) 542–4702.

*Waiver Title:* California—Work Pays Demonstration Project (Amendment).

*Description:* Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

*Date Received:* 3/14/94.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Glen Brooks, (916) 657–3291.

*Waiver Title:* California—AFDC and Food Stamp Compatibility Demonstration Project.

*Description:* Would make AFDC and Food Stamp policy more compatible by making AFDC households categorically eligible for Food Stamps; allowing recipients to deduct 40 percent of self-employment income in reporting monthly income; disregarding $100 per quarter in non-recurring gifts and irregular/infrequent income; disregarding undergraduate student assistance and work study income if payments are based on need; reinstating food stamp benefits discontinued for failure to file a monthly report when good cause is found for the failure; and simplifying vehicle valuation methodology.

*Date Received:* 5/23/94.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Michael C. Genest, (916) 657–3546.

*Waiver Title:* California—Assistance Payments Demonstration Project (Amendment).

*Description:* Would amend the Assistance Payments Demonstration Project by: exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala*.

*Date Received:* 8/26/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Michael C. Genest, (916) 657–3546.

*Waiver Title:* California—Work Pays Demonstration Project (Amendment).

*Description:* Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

*Date Received:* 11/9/94.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Rerson:* Eloise Anderson, (916) 657–2598.

*Waive Title:* California—School Attendance Demonstration Project.

*Description:* In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

*Date Received:* 12/5/94.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Michael C. Genest (916) 657–3546.

*Waiver Title:* California—Incentive to Self-Sufficiency Demonstration.

*Description:* Statewide, would require 100 hours CWEP participation per month for JOBS mandatory individuals who have received AFDC for 22 of the last 24 months and are working fewer than 15 hours per week after two years from JOBS assessment and: have failed to comply with JOBS without good cause, have completed CWEP or are in CWEP less than 100 hours per month, or have completed or had an opportunity to complete post-assessment education and training; provide Transitional Child Care and Transitional Medicaid to families who become ineligible for AFDC due to increased assets or income resulting from marriage or the reuniting of spouses; increase the duration of sanctions for certain acts of fraud.

*Date Received:* 12/28/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* New.

*Contact Person:* Michael C. Genest (916) 657–3546.

*Waiver Title:* Delaware: A Better Chance.

*Description:* Statewide, would implement a two-part demonstration. The Welfare Reform Project (WRP), operating from 10/95–6/99, would include: a 2-year limit on cash benefits for cases with able-bodied adults; educational and employment services based on adult's age; in limited cases benefits up to two additional years provided under pay-for-performance workfare program; non-time-limited benefits for unemployable cases; self-sufficiency contract requirements; education and employment-related sanctions to be ⅓ reduction in AFDC and Food Stamp benefits for first offense, ⅔ reduction for second, and loss of Food Stamp benefits until compliance and permanent AFDC loss for third; penalty for failure to comply with other contract requirements of $50 the first month, increasing by $50 per month until compliance; full-family sanction for noncooperation with Child Support; no AFDC increase for additional children; no 100-hour and work history rules for AFDC-UP; exempting special education and business accounts up to $5,000; fill-the-gap budgeting using child support and earnings; auto resource limit of $4,500; $50 bonus to teens who graduate from high school; additional 12 months of transitional child care and Medicaid benefits; no time limit on job search; forward funding of EITC payment; requiring teen parents to live in adult supervised setting, attend school, participate in parenting and family planning education, and immunize children; and providing JOBS services to non-custodial parents. The Family Assistance Plan (FAP), beginning 7/99, would replace the AFDC program and include: services, but no monetary grant, to children of teen parents; benefits for up to two years under pay-for-performance workfare program; welfare diversion payments and services; forward funding of EITC payment; child care assistance; access to Medicaid Managed Care System; no resource test; direct child support to family; small residual cash benefit program for unemployable cases.

*Date Received:* 1/30/95.

*Type:* Combined AFDC/Medicaid.

*Current Status:* New.

*Contact Person:* Elaine Archangelo, (302) 577–4400.

*Waiver Title:* Georgia—Work for Welfare Project.

*Description:* Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students.

*Date Received:* 6/30/94.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Nancy Meszaros, (404) 657–3608.

*Waiver Title:* Kansas—Actively Creating Tomorrow for Families Demonstration.

*Description:* Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one

vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

*Date Received:* 7/26/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Faith Spencer, (913) 296–0775.

*Waiver Title:* Maine—Project Opportunity.

*Description:* Increase participation in Work Supplementation to 18 months; use Work Supplementation for any opening; use diverted grant funds for vouchers for education, training or support services; and extend transitional Medicaid and child care to 24 months.

*Date Received:* 8/5/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Susan L. Dustin, (207) 287–3106.

Welfare Title: Maryland—Welfare Reform Project.

*Description:* Statewide, eliminate increased AFDC benefit for additional children conceived while receiving AFDC and require minor parents to reside with a guardian. In pilot site, require able-bodied recipients to do community service work after 18 months of AFDC receipt; impose full-family sanction on cases where JOBS non-exempt parent fails to comply with JOBS for 9 months; eliminate 100-hour rule and work history requirements for AFDC-UP cases; increase both auto and resource limits to $5000; disregard income of dependent children; provide one-time payment in lieu of ongoing assistance; require teen parents to continue education and attend family health and parenting classes; extend JOBS services to unemployed non-custodial parents; and for work supplementation cases cash-out food stamps.

*Date Received:* 3/1/94.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Katherine L. Cook, (410) 333–0700.

*Waiver Title:* Massachusetts—Employment Support Program.

*Description:* Would end cash assistance to most AFDC families, requiring recipients who could not find full-time unsubsidized employment after 60 days of AFDC receipt to do community service and job search to earn a cash ''subsidy'' that would make family income equal to the applicable payment standard; provide direct distribution of child support collections to, and cash-out food stamps for, those who obtain jobs; continue child care for working families as long as they are income-eligible (but requiring sliding scale co-payment); restrict JOBS education and training services to those working at least 25 hours per week; extend transitional Medicaid for a total of 24 months; and require teen parents to live with guardian or in a supportive living arrangement and attend school.

*Date Received:* 3/22/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Joseph Gallant, (617) 727–9173.

*Waiver Title:* Missouri—Families Mutual Responsibility Plan.

*Description:* Statewide, Missouri would require JOBS mandatory applicants and recipients to sign a self-sufficiency agreement with a 24-month AFDC time limit to be extended an additional 24 months when necessary. The agreement would allow a resource limit of $5000, an earned income disregard of 50 percent of a family's gross earned income for 12 consecutive months, and standard earned income disregards for remaining earned income. The agreement would require job search and CWEP after the 24 or 48 month limit; and would sanction individuals who do not comply without good cause as well as individuals who re-apply for AFDC if they have completed an agreement entered after July 1, 1997, if they received AFDC benefits for at least 36 months. Further, Missouri would require all minor parent applicants and recipients to live at home or in another adult-supervised setting; disregard parental income of minor parents up to 100 percent of Federal Poverty Guidelines; disregard earnings of minor parents if they are students; provide a alternative to standard filing unit requirements for households with minor parents; eliminate work history and 100-hour rule for two-parent families under 21 yrs. old; exclude the value of one automobile; and allow non-custodial parents of AFDC children credit against state child support debt for satisfactorily participating in JOBS.

*Date Received:* 1/30/95.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Greg Vadner, (314) 751–3124.

*Waiver Title:* Montana—Achieving Independence for Montanans.

*Description:* Would establish: (1) Job Supplement Program consisting of a set of AFDC-related benefits to assist individuals at risk of becoming dependent upon welfare; (2) AFDC Pathways Program in which all applicants must enter into a Family Investment Contract and adults' benefits would be limited to a maximum of 24 months for single parents and 18 months for AFDC-UP families; and (3) Community Services Program requiring 20 hours per week for individuals who reach the AFDC time limit but have not achieved self-sufficiency. The office culture would also be altered in conjunction with a program offering a variety of components and services; and simplify/unify AFDC and Food Stamp intake/eligibility process by: (1) eliminating AFDC deprivation requirement and monthly reporting and Food Stamp retrospective budgeting; (2) unifying program requirements; (3) simplifying current income disregard policies. Specific provisions provide for cashing out food stamps, expanding eligibility for two-parent cases, increasing earned income and child care disregards and resource limits, and extending transitional child care.

*Date Received:* 4/19/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Penny Robbe, (406) 444–1917.

*Waiver Title:* Nebraska—Welfare Reform Waiver Demonstration.

*Description:* Would assign recipients with mental, emotional or physical barriers to self-sufficiency or who do not have parental responsibility for the children to a Non-Time-Limited Program and require all other recipients to choose either a Time-Limited, High Disregards Program or a Time-Limited, Alternative Benefit Program. Under all three programs would eliminate increase in benefits for birth of children conceived while receiving AFDC; raise resource limits to $5,000 and exclude the value of one vehicle; require school attendance; deem, to the family, income of parents living with a minor parent in excess of 300% of the poverty level, but

where minor parent lives independently, secure support from the minor's parents. Under the Time-Limited, High Disregards Program, would provide cash assistance for a total of 24 months during a 48 month period (with provisions for certain exemptions and extensions); cash-out Food Stamps; reduce AFDC payments, but replace earned income disregards with a disregard of 60% of earned income; require all adult wage earners to participate in educational job skills training, work experience, intensive job search, or employment; make employment a JOBS component, but only for a job deemed to lead to self-sufficiency; extend job search requirements; require both parents in two-parent families to participate in JOBS; impose first JOBS sanction for a least one month, the second for at least 90 days and the third permanently; extend transitional Medicaid and child care to 24 months; eliminate 100 hour rule and work place attachment requirements for AFDC-UP cases. Under the Time-Limited, Alternative Benefit Program the same provisions would apply except that recipients of this program would have somewhat higher benefits, but with the current earned income disregards.

*Date Received:* 10/4/94.
*Type:* Combined AFDC/Medicaid.
*Current Status:* Pending.
*Contact Person:* Dan Cillessen, (402) 471–9270.

*Waiver Title:* New Hampshire—Earned Income Disregard Demonstration Project.

*Description:* AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded.

*Date Received:* 9/20/93.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Avis L. Crane, (603) 271–4255.

*Waiver Title:* New Mexico—Untitled Project.

*Description:* Would increase vehicle asset limit to $4500; disregard earned income of students; develop an AFDC Intentional Program Violation procedure identical to Food Stamps; and allow one individual to sign declaration of citizenship for entire case.

*Date Received:* 7/7/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Scott Chamberlin, (505) 827–7254.

*Waiver Title:* North Dakota—Training, Education, Employment and Management Project.

*Description:* Would require families to develop a social contract specifying time-limit for becoming self-sufficient; combine AFDC, Food Stamps and LIHEAP into single cash payment with simplified uniform income, expense and resource exclusions; increase income disregards and exempt stepparent's income for six months; increase resource limit to $5000 for one recipient and $8000 for families with two or more recipients; exempt value of one vehicle; eliminate 100-hour rule for AFDC–UP; impose a progressive sanction for noncooperation in JOBS or with child support; require a minimum of 32 hours of paid employment and nonpaid work; require participation in EPSDT; and eliminate child support pass-through.

*Date Received:* 9/9/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Kevin Iverson, (701) 224–2729.

*Waiver Title:* Ohio—A State of Opportunity Project.

*Description:* Three demonstration components proposed would test provisions which: divert AFDC and Food Stamp benefits to a wage pool to supplement wages of at least $8/hour; eliminate 100-hour rule for UP cases; provide fill-the-gap budgeting for 12 months from month of employment; increase child support pass-through to $75; provide a one-time bonus of $150 for paternity establishment; provide an additional 6 months of transitional child care; increase automobile asset limit to $4500 equity value; require regular school attendance by 6- to 19-year olds; continue current LEAP demo waivers (i.e., eliminate many JOBS exemptions and provide incentive payments and sanctions); and disregard JTPA earnings without time limit.

*Date Received:* 5/28/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Joel Rabb, (614) 466–3196.

*Waiver Title* : Oklahoma—Mutual Agreement, A Plan for Success.

*Description:* Five pilot demonstrations would test provisions which: 1) eliminate 100-hour rule for UP cases; 2) increase auto asset level to $5000; 3) time-limit AFDC receipt to cases with nonexempt JOBS participants to 36 cumulative months in a 60-month period followed by mandatory workfare program; 4) provide intensive case management; and 5) apply fill-the-gap budgeting.

*Date Recieved:* 2/24/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Raymond Haddock, (405) 521–3076.

*Waiver Title:* Oregon—Expansion of the Transitional Child Care Program.

*Description:* Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.

*Date Received:* 8/8/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Jim Neely, (503) 945–5607.

*Waiver Title:* Oregon—Increased AFDC Motor Vehicle Limit.

*Description:* Would increase automobile asset limit to $9000.

*Date Received:* 11/12/93.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Jim Neely, (503) 945–5607.

*Waiver Title:* Pennsylvania—School Attendance Improvement Program.

*Description:* In 7 sites, would require school attendance as condition of eligibility.

*Date Received:* 9/12/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Patricia H. O'Neal, (717) 787–4081.

*Waiver Title:* Pennsylvania—Savings for Education Program.

*Description:* Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

*Date Received:* 12/29/94.
*Type:* AFDC.
*Current Status:* Pending.
*Contact Person:* Patricia H. O'Neal, (717) 787–4081.

*Waiver Title:* Virginia—Welfare to Work Program.

*Description:* Statewide, would provide one-time diversion payments to qualified applicants in lieu of AFDC; change first time JOBS non-compliance sanction to a fixed period of one month or until compliance and remove the conciliation requirement; require paternity establishment as condition of eligibility; remove good cause for non-cooperation with child support and exclude from AFDC grant caretakers who cannot identify, misidentify, or fail to provide information on the father; require minor parents to live with an adult guardian; require AFDC caretakers without a high school diploma, aged 24 and under, and children, aged 13–18, to attend school; require immunization of children; allow $5000 resource exemption for savings for starting business; and increase eligibility for Transitional and At-Risk Child Care. Also: require non-exempt participants to sign an Agreement of Personal Responsibility as a condition of

eligibility and assign to a work site under CWEP for a number of hours determined by dividing AFDC grant plus the value of the family's Food Stamp benefits by the minimum wage; eliminate increased AFDC benefit for additional children born while a family received AFDC; time-limit AFDC benefits to 24 consecutive months; increase earned income disregards to allow continued eligibility up to the federal poverty level; provide 12 months transitional transportation assistance; modify current JOBS exemption criteria for participants; eliminate the job search limitation; and eliminate the deeming requirement for sponsored aliens when the sponsor receives food stamps. In 12 sites, would operate sub-component paying wages in lieu of AFDC benefits and Food Stamps for CWEP and subsidized employment, increase eligibility for transitional Medicaid; plus other provisions.

*Date Received:* 12/2/94.

*Type:* Combined AFDC/Medicaid.

*Current Status:* Pending.

*Contact Person:* Larry B. Mason, (804) 692–1900.

*Waiver Title:* Washington—Success Through Employment Program.

*Description:* Eliminate 100-hour rule and work history requirements for AFDC-UP cases and subtract client earnings from 55 percent of the State need standard rather than the payment standard.

*Date Received:* 11/16/93.

*Type:* AFDC.

*Current Status:* Pending.

*Contact Person:* Laurel Evans, (206) 438–8268.

## III. Listing of Approved Proposals since January 1, 1995

*Waiver Title:* South Carolina Self-Sufficiency and Parental Responsibility Program.

*Contact Person:* Linda Martin, (803) 737–6010.

## IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research.)

Dated: February 3, 1995.

**Karl Koerper,**

*Acting Director, Division of Research and Evaluation, Office of Policy and Evaluation.*

[FR Doc. 95–3158 Filed 2–7–95; 8:45 am]

BILLING CODE 4184–01–P

## Agency for Toxic Substances and Disease Registry

**[ATSDR–90]**

## Quarterly Public Health Assessments Completed

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice contains a list of sites for which ATSDR has completed a public health assessment during the period July-September 1994. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL), and non-NPL sites for which ATSDR has prepared public health assessments in response to requests from the public (petitioned sites).

**FOR FURTHER INFORMATION CONTACT:** Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

**SUPPLEMENTARY INFORMATION:** The most recent list of completed public health assessments and petitioned public health assessments which were accepted by ATSDR during April-June 1994, was published in the **Federal Register** on September 28, 1994, [59 FR 47878]. The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)].

### Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

### Public Health Assessments Completed or Issued

Between July 1, 1994, and September 30, 1994, public health assessments were issued for the sites listed below:

*NPL Sites*

California

- Cooper Drum - South Gate - (PB95–129359)
- Treasure Island Naval Station Hunters Point Annex San Francisco - (PB95–104972)

Florida

- Plymouth Avenue Landfill - Deland - (PB94–213998)

Illinois

- A & F Materials Reclaiming, Incorporated - Greenup (PB94–203049)
- Cross Brothers Pail Recycling (Pembroke) Pembroke Township - (PB94–214087)
- Outboard Marine Corporation - Waukegan - (PB95–136602)

Indiana

- Enviro-Chem Corporation - Zionsville - (PB95–130928)
- Northside Sanitary Landfill - Zionsville - (PB95–129409)
- U.S. Smelter and Lead Refinery, Incorporated (a/k/a USS Lead Refinery Incorporated) - East Chicago (PB94–210119)
- Waste Incorporated Landfill - Michigan City - (PB94–216850)

Iowa

- Shaw Avenue Dump - Charles City - (PB94–214095)

Kansas

- 57th and North Broadway Street Site - Wichita (PB94–218732)

Louisiana

- Bayou Bonfouca - Slidell - (PB94–215613)

Maryland

- Kane and Lombard Street Drums - Baltimore - (PB95–129284)

Massachusetts

- Fort Devens-Sudbury Training Annex - Sudbury - (PB94–203197)

Michigan

- Duell & Gardner Landfill - Muskegon - (PB94–218831)

Nebraska

American Shizuki Corporation/ Ogallala Electronics and Manufacturing - Ogallala - (PB95–105227)

Bruno Coop & Associated Properties - Bruno - (PB94–210101)

New York

Pasley Solvents & Chemicals, Incorporated - Garden City (PB94–209483)

North Carolina

General Electric Company LSD - East Flat Rock (PB94–195989)

Shepherd Farm - Flat Rock - (PB94–195989)

Pennsylvania

MW Manufacturing - Valley Township - (PB94–216819)

South Carolina

Para-Chem Southern, Incorporated - Simpsonville (PB94–217197)

Washington

Bonneville Power Administration Ross Complex (USDOE) Vancouver - (PB95–109500)

Wisconsin

Muskego Sanitary Landfill - Muskego - (PB94–215621)

N.W. Mauthe Company, Incorporated - Appleton - (PB94–218849)

Refuse Hideaway - Middleton - (PB94–215639)

*Petitioned Site Non-NPL*

Indiana

American Chemical Services, Incorporated - Griffith (PB94–218823)

North Carolina

Caldwell Systems Incorporated - Lenoir - (PB95–129383)

Tennessee

Chattanooga Creek Tar Deposit - (a/k/a Chattanooga Creek) Chattanooga - (PB94–203411)

Dated: January 31, 1995.

**Claire V. Broome,**

*Deputy Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 95–3032 Filed 2–7–95; 8:45 am]

BILLING CODE 4163–70–P

## Substance Abuse and Mental Health Services Administration

## Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP), National Advisory Council in February 1995.

The meeting agenda of the CSAP, National Advisory Council will include administrative matters, announcements and program developments, the SAMHSA Strategic Plan and CSAP programmatic issues including High Risk Finding Data Bank, Community Partnership Promising Practices, Cross Site Evaluation, Rules of Evidence and Knowledge Transfer. It will also include review of contracts and procurement plans; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b (c)(3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of this meeting and roster of committee members may be obtained from: Ms. Vera Hunter, Acting Committee Management Officer, CSAP, Rockwall II Building, Suite 7A–140, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–9540.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date(s): February 23–24, 1995.

Place: Marriott Suites—Bethesda, 6711 Democracy Boulevard, Bethesda, Maryland 20817.

Open: February 23, 1995 8:30 a.m.—6:00 p.m.; February 24, 1995 9:00 a.m.—12:30 p.m.

Closed: February 24, 1995 2 p.m.—Adjournment.

Contact: Yuth Nimit, Ph.D.; Rockwall II Building, Suite 7A–140; Telephone: (301) 443–9540.

Dated: February 3, 1995.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 95–3155 Filed 2–7–95; 8:45 am]

BILLING CODE 4162–20–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Administration

**[Docket No. N–95–3880]**

## Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 26, 1995.

**Kay Weaver,**

*Acting Director, Information Resources Management Policy and Management Division.*

## Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Adjustment Factor (AAF) Rent Increase Requirement Pursuant to the Housing Appropriation Act of 1994

Office: Housing

Description of the Need for the Information and its Proposed Use: Owners must submit form HUD–92273, Estimates of Market Rent by Comparison, in order to receive a rent increase when rent levels for a specific unit type, in a Substantial Rehab or New Construction contract, exceeds the existing Fair Market Rent (FMRs) for the specific unit type. This form must be completed by a non-identity of interest State certified appraiser and must contain at least three examples of unassisted housing in the same market area for similar age, type, and quality which indicate rent levels of similar unassisted housing are above the published FMRs.

Form Number: HUD–92273

Respondents: Businesses or Other For-Profit

Reporting Burden:

| | Number of respondents | × | Frequence of response | × | House per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–92273 | 10,000 | | 1 | | .553 | | 5,527 |

Total Estimated Burden Houses: 5,527

Status: New

Contact: Barbara Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 26, 1995.

[FR Doc. 95–3100 Filed 2–7–95; 8:45 am]

BILLING CODE 4210–01–M

**[Docket No. R–95–1364; FR–1761–N–04]**

## Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 26, 1995.

**David S. Cristy,**

*Acting Director, Information Resources Management Policy and Management Division.*

## Notice of Submission of Proposed Information Collection to OMB

Proposal: Loans for Housing for the Elderly or Handicapped—Housing Assistance Payments Contract and Project Management (FR–1761)

Office: Housing

Description of the Need for the Information and its Proposed Use: This regulation will amend 24 CFR part 885, which governs projects that receive direct loans under Section 202 of the Housing Act of 1959, and housing assistance under Section 8 of the United States Housing Act of 1937. The final rule will add regulatory provisions to govern the housing assistance payments contract, project operations and project management.

Form Number: None

Respondents: Individuals or Households, Federal Agencies or Employees, and Non-Profit Institutions

Reporting Burden:

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 4,294 | | 50 | | .404 | | 86,739 |

Total Estimated Burden Hours: 86,739
Status: Extension with changes
Contact: Eugene R. Fogel, HUD, (203) 708–3287; Joseph F. Lackey Jr., OMB (202) 395–7316.

Date: January 26, 1995.

[FR Doc. 95–3099 Filed 2–7–95; 8:45 am]

BILLING CODE 4210–01–M

## Office of the Assistant Secretary for Housing-Federal Housing Commissioner

**[Docket No. N–95–3879; FR–3872–N–01]**

## Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

**ACTION:** Notice of change in debenture interest rates.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning January 1, 1995, is 8 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1995, is 8⅜ percent.

**FOR FURTHER INFORMATION CONTACT:** James B. Mitchell, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, D.C. 20024. Telephone (202) 755–7450 ext. 125, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 1995, is 8⅜ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8⅜ percent for the six-month period beginning January 1, 1995. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1995.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | On or after | Prior to |
|---|---|---|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, 1983. |
| 10⅜ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1, 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅛ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |
| 8¾ | Jan. 1, 1991 | July 1, 1991. |
| 8½ | July 1, 1991 | Jan. 1, 1992. |
| 8 | Jan. 1, 1992 | July 1, 1992. |
| 8 | July 1, 1992 | Jan. 1, 1993. |
| 7¾ | Jan. 1, 1993 | July 1, 1993. |
| 7 | July 1, 1993 | Jan. 1, 1994. |
| 6⅝ | Jan. 1, 1994 | July 1, 1994. |
| 7¾ | July 1, 1994 | Jan. 1, 1995. |
| 8⅜ | Jan. 1, 1995. | |

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning January 1, 1995, is 8 percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1995.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: February 1, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 95–3101 Filed 2–7–95; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[W0220–1020–00–241A]**

## Information Collection Submitted to the Office of Management and Budget for Review Under Paperwork Reduction Act

The proposal for the collection of information listed below has been

submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0051), Washington, D.C. 20503, telephone (202) 395–7340.

*Title:* Actual Grazing Use Report.
*OMB Approval Number:* 1004–0051.
*Abstract:* This form is used by permittees to provide information on the actual amount of livestock grazing use made on the public lands within a specified time to the Bureau of Land Management for billing purposes and program monitoring.
*Bureau Form Number:* 4130–5.
*Frequency:* Annually.
*Description of Respondents:* Grazing permittees required to report actual livestock use on the public lands.
*Estimated completion time:* 24 minutes.
*Annual Responses:* 15,000.
*Annual Burden Hours:* 6,000.
*BLM Clearance Officer (Alternate):* Mae C. Bowman (202) 452–5011.

Dated: October 25, 1994.

**Ray A. Brady,**

*Acting Assistant Director, Land and Renewable Resources.*

[FR Doc. 95–3030 Filed 2–7–95; 8:45 am]

BILLING CODE 4310–84–M

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**[WO220–1020–00–241A]**

## Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0068), Washington, DC 20503, telephone (202) 395–7340.

*Title:* Cooperative Agreement for Range Improvements.
*Abstract:* Respondents supply information to obtain authority to construct and/or maintain range improvements on the public lands in cooperation with Bureau programs.
*Bureau Form Number:* 4120–6.
*Frequency:* Occasionally.
*Description of Respondents:* Permittees or lessees authorized to graze livestock on public lands.
*Estimated Completion Time:* 10 minutes.
*Annual Responses:* 600.
*Annual Burden Hours:* 102.
*Bureau Clearance Officer (alternate)*: Mae C. Bowman (202) 452–5011.

Dated: October 26, 1994.

**Ray A. Brady,**

*Acting Assistant Director, Land and Renewable Resources.*

[FR Doc. 95–3029 Filed 2–7–95; 8:45 am]

BILLING CODE 4310–84–M

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**[ES–930–05–1320–020241A]**

## Amendment to the List of Affected States Under Federal Coalbed Methane Recovery Regulations

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Removal of Ohio from the List of Affected States.

**SUMMARY:** The Energy Policy Act of 1992 (the Act) (Pub. L. 102–486) requires that the Secretary of the Interior (Secretary) administer a Federal program to regulate coalbed methane development in States where coalbed methane development has been impeded by disputes or uncertainty over ownership of coalbed methane gas. As required by the Act, the Department of the Interior, with the participation of the Department of Energy, developed a List of Affected States to which this program would apply (58 FR 21589, April 22, 1993). The List of Affected States is currently comprised of the States of Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and Tennessee.

The Governor of Ohio, Honorable George V. Voinovich, has petitioned the Secretary of the Interior for removal from the List of Affected States. The Governor's petition states that, on May 17, 1994, he notified both Houses of the Ohio General Assembly of his intention to petition for deletion from the List of Affected States. During that time period each House of the Ohio General Assembly adopted a resolution authorizing the Governor to petition for deletion from the List of Affected States.

Section 1339 of the Act provides three mechanisms by which a state may be removed from the List of Affected States:

1. A State may pass a law or resolution requesting removal;
2. The governor of a state may petition for removal, but only after giving the legislature six months notice, during a legislative session, of his intention to submit the petition; or
3. The state legislature implements a law or regulation permitting and encouraging the development of coalbed methane.

Since the State of Ohio has met two of the conditions for removal from the List of Affected States by passing a resolution requesting removal and by petitioning for removal after notification to the legislature by the Governor, the State of Ohio is officially removed from the List of Affected States.

**FOR FURTHER INFORMATION CONTACT:** David R. Stewart, Chief, Branch of Resources Planning and Protection, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153 or telephone (703) 440–1728; or Charles W. Byrer, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, West Virginia 26507, or telephone (304) 291–4547.

Dated: February 2, 1995.

**Carson W. Culp, Jr.,**

*State Director.*

[FR Doc. 95–3081 Filed 2–7–95; 8:45 am]

BILLING CODE 4310–GJ–M

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# Bureau of Reclamation

## Gila River Indian Community Agricultural Development Master Plan, Maricopa and Pinal Counties, Arizona

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent and meeting.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) plans to prepare a draft programmatic environmental impact statement (PEIS) on the proposed implementation of an agricultural development master plan by the Gila River Indian Community (GRIC), located in Maricopa and Pinal Counties, Arizona. The Bureau of Indian Affairs (BIA) and GRIC are cooperating agencies on the PEIS.

Reclamation will hold public meetings to provide an opportunity for public input from affected and/or interested agencies, tribes and the general public.

Dates: Two public meetings will be held on March 2, 1995:
- 1 p.m., Ahwatukee, Arizona.
- 7 p.m., Coolidge, Arizona.

Locations:

- Quality Inn-South Mountain, 5121 E. LaPuente St. (Elliot Rd. & I–10), Ahwatukee, Arizona.
- Coolidge High School Auditorium, 800 W. Northern Ave., Coolidge, Arizona.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Eto, Environmental Protection Specialist, Bureau of Reclamation, Phoenix Area Office (Code: PXAO–150) 23636 N. 7th Street, PO Box 9980, Phoenix, AZ 85068; Telephone (602) 870–6771.

**SUPPLEMENTARY INFORMATION:** The Colorado River Basin Project Act of 1968 (CRBPA) authorized the Secretary of the Interior (Secretary), acting through Reclamation, to construct the Central Arizona Project (CAP). The CRBPA also authorized Reclamation to assist Indian communities receiving CAP water allocations with development of their water delivery facilities. In 1985, GRIC developed an agriculturally based master plan for rehabilitating and improving existing irrigation systems and agricultural lands, as well as developing new land and water resources. This plan was adopted by the Tribal Council in December 1985. Under the plan, an irrigation water delivery system and appurtenant facilities would be constructed to serve up to 146,330 acres of land.

On October 22, 1992, the Secretary entered into a water service contract with GRIC for the delivery of 173,100 acre-feet of CAP water annually to GRIC. To obtain the maximum benefit from Reclamation resources available through CRBPA, Reclamation and GRIC propose to use CAP-authorized funds for the design and construction of a common use irrigation delivery system. This common use irrigation delivery system would be capable of conveying irrigation water (including existing and potential future ground, surface, and CAP water resources) to a maximum of 146,330 acres identified in the master plan as having the potential for agricultural development. Plans also provide for enhancement of certain wildlife habitat within GRIC, and rehabilitation and betterment of the San Carlos Indian Irrigation Project (SCIIP) Joint Works, which are under BIA's jurisdiction. Reclamation would contribute resources to implement the agricultural development master plan in an amount that is equivalent to what would have been spent to design and construct a single purpose CAP water delivery system.

The major components of GRIC's agricultural development master plan include the following: (1) Development of up to 146,330 acres of land for agricultural use and construction of a water delivery system to serve those lands; (2) development of riverine and riparian habitat areas associated with agricultural development; and (3) rehabilitation and betterment of SCIIP Joint Works, which would consist of (a) rehabilitation of Ashurst-Hayden Diversion Dam; (b) construction of sediment removal basins and designation of a sediment disposal area near the headworks of the Florence-Casa Grande Canal; (c) construction of a new concrete-lined Florence-Casa Grande Canal and rehabilitation and lining of the remaining SCIIP Joint Works distribution system canals; and (d) construction of an earth and soil cement-lined regulation reservoir. There would be no modification to the existing Picacho Reservoir, which would be available for temporary storage of drainage and floodflows.

Because CAP-authorized funds would be used to implement portions of the master plan, Reclamation will prepare a draft PEIS to evaluate potential overall impacts to the human environment from implementing the master plan. Once finalized, the PEIS would assist Reclamation in making decisions regarding use of Federal funds to implement portions of the master plan. For activities related to the master plan that require a Federal action or involve Federal funds, future NEPA documentation would be prepared as the specific design- and construction-related details are developed. Future NEPA documents would be tiered from the PEIS.

The draft PEIS will describe two proposed alternatives plus a no Federal action alternative. Under the preferred alternative, Reclamation would support and consider funding portions of all aspects of the agricultural development master plan. Under the second alternative, Reclamation would support and consider funding of all aspects of the agricultural development master plan that fall within GRIC's boundaries, and rehabilitation and betterment of the Pima Lateral portion of the SCIIP Joint Works.

Thus far, the following are significant environmental issues that will be evaluated in the draft PEIS: Potential loss of desert habitat and impacts to plants and wildlife, including threatened or endangered species; potential impacts to archaeological sites, and historic and traditional cultural properties; potential impacts to, and creation/enhancement of, wetland and riparian habitat; potential impacts to surface and ground water quality and quantity; potential impacts to Indian and non-indian land owners, allottees and residents; potential impacts to the socio-economic conditions of GRIC at large; potential impacts to Indian Trust Assets; and potential opportunities for developing passive recreational benefits.

Extensive scoping has occurred since the mid-1980's within GRIC, involving members of GRIC at all levels. This input was taken into consideration in identifying significant environmental issues to be evaluated in the draft PEIS. Therefore, no additional separate formal scoping meetings within GRIC are planned to be held in connection with the preparation of the draft PEIS.

The draft PEIS is expected to be completed and available for review and comment by late summer 1995. The authority for approving and filing this draft PEIS has been delegated to Reclamation.

Comments regarding the proposed action are welcome at the public meeting. To ensure consideration in the preparation of the draft PEIS, written comments should be sent to the address shown above by March 17, 1995. All public input received by Reclamation as a result of previous public involvement will automatically be considered in the preparation of the draft PEIS. If you would like to be placed on a mailing list for any subsequent information, please write or telephone Ms. Sandra Eto.

Dated: February 2, 1995.

**Lawrence F. Hancock,**

*Regional Director.*

[FR Doc. 95–3156 Filed 2–7–95; 8:45 am]

BILLING CODE 4310–94–P

## Fish and Wildlife Service

## Endangered and Threatened Species Permit Application; Notice of Intent To Prepare an Environmental Impact Statement To Allow Incidental Take of Four Threatened Species on Lands Administered by Plum Creek Timber Company, L.P. in the State of Washington

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

**ACTION:** Notice of Intent.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS). The EIS will consider a permit application by Plum Creek Timber Company, L.P. (applicant) to take federally listed species, under the provisions of section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. It will also consider the development of an unlisted species agreement. The Service is conducting scoping and hereby encourages

interested agencies, organizations, and individuals to provide comments on the issues which should be addressed in the EIS.

**DATES:** Written comments regarding the scope of the EIS should be received on or before March 10, 1995. A scoping workshop will be held on February 22, 1995.

**ADDRESSES:** Written comments should be addressed to Mr. Curt Smitch; U.S. Fish and Wildlife Service; 3773 Martin Way East; Building C, Suite 101; Olympia, Washington 98501. Comments received will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday). A scoping workshop will be held from 6:00–9:00 p.m. at the Bellevue Red Lion Hotel; Overlake Room; 300 112th Avenue S.E.; Bellevue, Washington 98004.

**FOR FURTHER INFORMATION CONTACT:** William Vogel, Wildlife Biologist; U.S. Fish and Wildlife Service; 3773 Martin Way East; Building C, Suite 101; Olympia, Washington 98501, (360) 534–9330.

**SUPPLEMENTARY INFORMATION:** The applicant has launched an effort to address species conservation and ecosystem management on approximately 171,000 acres of private land in the Cascade Mountains of Washington. The subject ownership occurs in a ''checkerboard'' pattern in an area commonly referred to as the I–90 Corridor. The term ''checkerboard'' refers to alternate sections of public and private land. This effort will include the development of a Habitat Conservation Plan (HCP) and application for an incidental take permit as authorized under section 10 of the Act. The applicant intends to request permits for the incidental take of the northern spotted owl *(Strix occidentalis caurina)* which would occur as a result of timber harvest within a portion of the owl sites present on the subject property. There are currently more than 100 owl sites present within the larger 419,000-acre planning area.

The applicant plans to avoid the take of marbled murrelets *(Brachyramphus marmoratus marmoratus),* but will likely include murrelets in the incidental-take permit application in the event take occurs accidentally. The applicant also plans to include grizzly bear *(Ursus arctos = U.a. horribilis)* and gray wolf *(Canis lupus)* in the permit application to cover circumstances where these species may occur on the subject property in the future and may at some point be subject to disturbance. The applicant is also addressing numerous other species in the HCP and intends to request an unlisted species agreement.

As a further opportunity for interested persons to comment on these and other issues associated with this planning effort, a scoping workshop is scheduled for 6:00–9:00 p.m. on February 22, 1995. The workshop location will be the Overlake Room of the Bellevue Red Lion Hotel, 300 112th Avenue S.E.; Bellevue, Washington 98004.

Interested parties may contact the Service at the address listed above to receive additional information, including a map for the workshop location.

Dated: February 1, 1995.

**Thomas Dwyer,**

*Deputy Regional Director.*

[FR Doc. 95–3079 Filed 2–7–95; 8:45 am]

**BILLING CODE 4310–55–P**

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## Intent To Prepare a Programmatic Environmental Impact Statement for the Application of the Coastal Barrier Resources Act to the Pacific Coast

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

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information to prepare a programmatic Environmental Impact Statement (EIS) on the application of the Coastal Barrier Resources Act (CBRA) on the Pacific coast. The National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) require publication of a notice to inform other agencies and the public on the scope of issues to be addressed and identified in the EIS. All previous public comments received by the FWS during the review of the 1993 Draft Coastal Barriers Study, conducted according to Section 6 of the Coastal Barrier Improvement Act of 1990, will be considered part of the information gathering process for this EIS.

Changes to individual mapped coastal barrier unit boundaries that would depict new development or structural changes are not within the scope of this programmatic EIS. All major issues raised during the public review of the 1993 Draft Coastal Barriers Study and maps regarding technical criteria used in mapping the units have been considered and will be addressed in the EIS. Any future changes to individual units in the current inventory will require the recommendation of the Governors or Congressional representatives of the affected States.

Please submit recommendations or comments on the scope of issues to be addressed in this EIS by 45 days after the publication of this notice.

**DATES:** Written comments should be received by March 27, 1995.

**ADDRESSES:** Comments should be addressed to: CBRA EIS Team Leader, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181.

**FOR FURTHER INFORMATION CONTACT:** Paula Levin, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 9732–4181, (503) 231–2068. Table ''A'' provides a summary of technical changes on the 1993 Draft Coastal Barrier Maps of California, Oregon, and Washington. No unit boundary changes were made in Hawaii, however, the EIS will address the applicability of the technical criteria to the coastal barriers in Hawaii, the Pacific Islands and the other affected States. The 1994 draft Coastal Barrier maps can be viewed at the central locations listed in this notice. The maps are being provided for informational purposes at the locations listed and only to county planning offices in those counties where unit boundaries were changed.

**SUPPLEMENTARY INFORMATION:** Coastal barriers are unique landforms that provide protection for diverse aquatic habitats and are the mainland's first line of defense against the impacts of coastal storms and erosion.

Congress recognized the vulnerability of coastal barriers to development by passing the Coastal Barriers Resource Act in 1982 (CBRA). CBRA (Pub L. 97–348) established the Coastal Barriers Resources System (System) that prohibits all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. Congress took this action because Federal expenditures and financial assistance have the effect of encouraging development of coastal barriers. By restricting these Federal expenditures, Congress intended to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife, and other natural resources associated with coastal barriers along the Atlantic and Gulf of Mexico coasts.

In 1990, Congress passed the Coastal Barrier Improvement Act (CBIA). The CBIA (Pub. L. 101–591) tripled the size of the System by adding coastal barriers of the Great Lakes and additional areas along the Atlantic and Gulf of Mexico coasts. The System currently includes 560 units, comprising almost 1.3 million acres and about 1,200 shoreline miles.

One hundred and ninety-five (195) units encompassing 104,814 acres and 307 miles of shoreline on the Pacific coast are proposed for inclusion in the System. Of this acreage, approximately 28,400 acres consist of fastland (non-wetland area above the mean high tide line) and 76,414 acres consist of wetlands and other associated aquatic habitats.

The proposal to add 195 units to the System is the result of the CBIA's requiring the Secretary of the Interior (Secretary) to prepare a study that examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States, through inclusion in the System. This area includes the States of California, Hawaii, Oregon, and Washington, American Samoa, Guam, the Northern Marianas, and all Pacific Ocean territories and possessions of the United States. In addition, the Secretary was directed to prepare maps identifying the boundaries of undeveloped coastal barriers within this area. The Secretary delegated the authority to develop the Study and accompanying maps of undeveloped coastal barriers of the Pacific coast to the U.S. Fish and Wildlife Service (FWS).

Notices of availability of FWS-developed Draft Coastal Barrier Maps were published in the **Federal Register** on April 23, 1992 (57 FR 14846), for Oregon, May 29, 1992 (57 FR 22821), for Washington, July 7, 1992 (57 FR 29883) for California, and August 14, 1992 (57 FR 36668), for Hawaii. Following the 90-day public comment period, FWS revised the draft maps to correct any technical errors noted during the comment period. The revised draft maps, and all comments received, were forwarded to appropriate State Governors for review and comment.

The FWS developed the required Draft Study and revised draft maps of areas under consideration for inclusion in the Coastal Barrier Resources System in 1993. The FWS made the Draft Study and maps available for a 60-day public review and comment period on December 17, 1993 (58 FR 66016). Appropriate State Governors were afforded an additional 30 days for review and comment. On February 23, 1994, the FWS extended the public comment period until March 25, 1994, and for State Governors until April 25, 1994. Between January 5, 1994, and January 18, 1994, 15 public meetings were held in Oregon, Washington, California, and Hawaii regarding the draft study and accompanying maps. Press releases were issued in all affected areas. Mailings of the draft maps and Study were provided to individuals and central locations on FWS mailing lists, supplemented by mailings lists provided by State Coastal Zone Management program managers. Announcements of availability and central locations for review of the maps and Study were also widely distributed.

Coastal barrier units that occur on Tribal lands were included on the 1991 draft maps but deleted from the 1993 draft maps at the request of the Tribal sovereign nations. Neither the CBRA nor the CBIA provides guidance regarding the inclusion of Tribal lands in the System. Recognizing the sovereignty of the Native American nations, the Department of the Interior (Department) solicited recommendations from each affected Tribe. These Tribal recommendations will be submitted to Congress with the Department's final EIS recommendations.

A Draft Environmental Impact Statement (DEIS) will be available for public for review and comment when complete. A summary of alternatives currently proposed for evaluation in the EIS include:

1. No action Alternative: current circumstances projected into the future.
2. Implement the Act with stipulations:
   (a) Apply Section 4(d) CBIA provision to:
   (1) Federal lands undergoing disposal following inclusion of the Pacific coastal barriers in the System, providing, the disposal has not yet been completed.
   (2) ''otherwise protected areas (and private inholdings)'' not in Federal or State ownership if changes in their status may result in their development.
   (b) Engage in appropriate Government to Government coordination before considering incorporation of Tribal lands including reservations, allotment lands, and usual and accustomed treaty areas in the System.

Other alternatives may be explored if responses to scoping and further analysis show the necessity.

**Locations of Maps**

*All States*

U.S. Fish and Wildlife Service, Ecological Services, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Phone: (503) 231–2068

U.S. Fish and Wildlife Service, Ecological Services, 4401 N. Fairfax Drive, Room 400, Arlington, Virginia 22203; Phone: (703) 358–2201

*Hawaii*

Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, Honolulu, Hawaii 96813; Phone: (808) 541–2749

Hawaii Office of State Planning, State Coastal Zone Management, 1177 Alakea Street, 2nd Floor, Honolulu, Hawaii 96813; Phone: (808) 587–2880

Kauai National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, Kilauea, Kauai, Hawaii 96754; Phone: (808) 828–1413

Hakalau Forest National Wildlife Refuge, U.S. Fish and Wildlife Service, 154 Waianuenue Avenue, Room 219, Hilo, Hawaii 96720; Phone: (808) 969–9909

Maui County Planning Office, Parks and Recreation, 1580–C Kaahumanu Avenue, Wailuku, Maui, Hawaii 96793; Phone: (808) 243–7931

Kahului Public Library, 20 School Street, Kahului, Hawaii 96793; Phone: (808) 877–5048

Mitchell Paole Center, 90 Inoa Street, Kaunakakai, Molokai 96748; Phone: (808) 553–3204

*California*

Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008; Phone: (619) 431–9440

Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003; Phone: (805) 644–1766

Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825; Phone: (916) 979–2116

San Francisco Bay National Wildlife Refuge, U.S. Fish and Wildlife Service, 1 Marshlands Road, Fremont, California 94536; Phone: (510) 792–0222

Humboldt Bay National Wildlife Refuge, U.S. Fish and Wildlife Service, 1020 Ranch Road, Loleta, California 95551; Phone: (707) 733–5406

California Coastal Commission, 45 Fremont, Suite 2000, San Francisco, California 94105–2219; Phone: (415) 904–5280

California Coastal Commission Legislative Office, 921 11th Street, Room 1200, Sacramento, California 95814; Phone: (916) 445–6067

State of California, The Resources Agency, 1416 9th Street, Suite 1311, Sacramento, California 95814; Phone: (916) 654–2506

*Oregon*

Portland Field Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266; Phone: (503) 231–6179

Oregon Coastal Refuges, U.S. Fish and Wildlife Service, 2030 Marine Science

Drive, Newport, Oregon 97365–5296; Phone: (503) 867–4550

Oregon Coastal/Ocean Management Program, Dept. of Land and Conservation Development, 1175 Court Street NE, Salem, Oregon 97310–0590; Phone: (503) 373–0092

Bandon Public Library, P.O. Box 128, Bandon, Oregon 97411 (located in the Bandon City Hall on Highway 101); Phone: (503) 347–3221

Tillamook Public Library, 210 Ivy Avenue, Tillamook, Oregon 97141; Phone: (503) 842–4792

Seaside Public Library, 60 N. Roosevelt Boulevard, Seaside, Oregon 97138; Phone: (503) 738–6742

Hatfield Marine Science Center, Guin Library, 2030 Marine Science Drive, Newport, Oregon 97365; Phone: (503) 867–0249

North Bend Public Library, 1800 Sherman Avenue, North Bend, Oregon 97459; Phone: (503) 756–0400

*Washington*

Olympia Field Office, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501–2192; Phone: (206) 753–9440

Willapa National Wildlife Refuge, U.S. Fish and Wildlife Service, HC 01, Box 910, Ilwaco, Washington 98624–9797; Phone: (206) 484–3482

Nisqually National Wildlife Refuge, U.S. Fish and Wildlife Service, 100 Brown Farm Road, Olympia, Washington 98506; Phone: (206) 753–9467

Washington Coastal Refuges, U.S. Fish and Wildlife Service, 1638 Barr Road South, Port Angeles, Washington 98382; Phone: (206) 457–8451

Washington Department of Ecology, Shorelands and Coastal Management Program, 300 Desmond Drive, Olympia, Washington 98504; Phone: (206) 407–7250

Dated: January 31, 1995.

**Thomas Dwyer,**

*Acting Regional Director.*

TABLE A—1994 PACIFIC COASTAL BARRIER UNIT CHANGES

[Old=1993; New=1994]

| State/county | Unit No. (old/new) | Unit name | Action |
|---|---|---|---|
| California: | | | |
| Sonoma | N/A / CA–28 | Bodega Bay | Added unit. |
| San Luis Obispo | CA–44/CA–47 | Oso Flaco Lake | Extended southeast boundary to include associated aquatic habitat. Added 24 acres of wetland. |
| Oregon: | | | |
| Clatsop | OR–02/OR–02 | Necanicum River | Expansion in northeast corner of unit to include associated aquatic habitat. Added 25 acres of wetland. |
| Tillamook | OR–04/OR–04 | Nehalem Spit and Bay | Expansion in northeast corner of unit to include associated aquatic habitat. Added 19 acres of wetland. |
| Tillamook | OR–10/OR–10 | Kiwanda Beach | Expansion of southeast corner to include associated aquatic habitat. Added 114 acres of wetland. |
| Lincoln | OR–11/OR–11 | Salmon River Estuary | Expansion to include associated aquatic habitat along Salmon River. Added 562 acres of wetland. |
| Lane | OR–15/OR–15 | Baker Beach | Expanded northern boundary to include barrier and associated aquatic habitat. Added 0.5 miles of shoreline, 39 acres of fastland, and 9 acres of wetland. |
| Coos | OR–19/OR–19 | North Spit and Coos Bay/Oregon Dunes. | Excluded industrial waste ponds and relocated inland boundary of entire unit to wetland/upland interface at foredune. Removed 1,066 acres of fastland and 3,256 acres of wetland. |
| Curry | OR–25/OR–25 | Euchre Creek | Extended northern boundary. Added 0.1 miles of shoreline, 6 acres of fastland, and 6 acres of wetland. |
| Curry | OR–26/OR–26 | Greggs Creek | Extended southern boundary. Added 0.3 miles of shoreline, 16 acres of fastland, and 4 acres of wetland. |
| Washington: | | | |
| Whatcom | WA–01/Deleted | Semiahmoo Spit/Drayton Harbor. | Site visit and documentation provided by property owners indicated site is developed and does not meet criteria. |
| Clallam | WA–57/WA–51 | Kilakala Point | Extended southwest edge to include associated aquatic habitat at Grays Marsh Creek. Added 25 acres of wetland. |
| Grays Harbor | WA–70/WA–58 | Conner Creek | Added an exclusion for a structure and removed developed portion (R.V. parking/campground area). Removed 3 acres of fastland and 1 acre of wetland. |
| Grays Harbor | WA–71/WA–59 | Ocean Shores | Removed a developed portion near Oyhut. Added 0.1 miles of shoreline and removed 2 acres of fastland and 2 acres of wetland. |
| Grays Harbor | WA–72/WA–60 | Ocean Shores South | Redelineated to make eastern edge more reflective of actual barrier and extended into aquatic habitat to the north. Removed 0.1 miles of shoreline and added 583 acres of wetland. |
| Grays Harbor | WA–73/WA–61 | Westport | Added exclusion for parking lot and structure off of Ocean Avenue and removed additional developed area which extended into barrier unit. Removed 0.6 miles of shoreline, 16 acres of fastland, and 5 acres of wetland. |
| Pacific | WA–79/WA–68 | Long Beach/Seaview | Removed several developed areas which extended into barrier unit. Removed 3 acres of fastland and 6 acres of wetland. |

[FR Doc. 95–3080 Filed 2–7–95; 8:45 am]

BILLING CODE 4310–55–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–677 (Final)]**

## Coumarin from the People's Republic of China

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from the People's Republic of China of coumarin,[2] provided for in subheading 2932.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). Chairman Watson, Vice Chairman Nuzum, and Commissioner Bragg find that critical circumstances exist with respect to subject imports from China. Commissioner Rohr, Commissioner Newquist, and Commissioner Crawford find that critical circumstances do not exist with respect to subject imports from China.

### Background

The Commission instituted this investigation effective August 2, 1994, following a preliminary determination by the Department of Commerce that imports of coumarin from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1676b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 24, 1994 (59 FR 43590). The hearing was held in Washington, DC, on December 13, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 1, 1995. The views of the Commission are contained in USITC Publication 2852 (February 1995), entitled ''Coumarin from the People's Republic of China: Investigation No. 731–TA–677 (Final).''

Issued: February 3, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–3141 Filed 2–7–95; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that also known by other names, including 2H-1-benzopyran-2-one, 1, 2-benzopyrone, cis-o-coumarinic acid lactone, coumarinic anhydride, 2-Oxo-1, 2-benzopyran, 5, 6-benzo-alpha-pyrone, ortho-hydroxy-cinnamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor. All forms and variations of coumarin are included within the scope of the investigation, such as coumarin in crystal, flake, or powder form, and ''crude'' or unrefined coumarin (i.e., prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$).

**[Investigation No. 337–TA–364]**

## Certain Curable Fluoroelastomer Compositions and Precursors Thereof; Notice of Decision not to Review Initial Determination Finding a Violation of Section 337 and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bondings

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) issued on December 15, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation finding a violation of section 337 in the importation into the United States and the sale within the United States after importation of certain curable fluoroelastomer compositions and precursors thereof.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be 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 S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** On March 16, 1994, the Commission instituted an investigation of a complaint filed by Minnesota Mining and Manufacturing Company (''3M'') under section 337 of the Tariff Act of 1930. The complaint alleged that Ausimont, S.p.A., of Milan, Italy, and Ausimont U.S.A., Inc., of Morristown, NJ, imported, sold for importation, or sold in the United States after importation certain curable fluoroelastomer compositions and precursors thereof that infringed certain claims of U.S. Letters Patent 4,287,320 (''the '320 patent''). The Commission's notice of investigation named as respondents Ausimont Italy and Ausimont U.S.A., each of which was alleged to have committed one or more unfair acts in the importation or sale of curable fluoroelastomer compositions and precursors thereof that infringe claims of the asserted patent.

The ALJ conducted an evidentiary hearing commencing on September 23, 1994, and issued his final ID on December 15, 1994. He found that: (1) The '320 patent is not invalid; (2) respondents' imported products infringe the claims in issue of the '320 patent; and (3) complainant 3M satisfied the economic requirements for existence of a domestic industry. Based upon his findings of validity, infringement, and domestic industry, the ALJ concluded that there was a violation of section 337.

Respondents filed a petition for review of the ALJ's findings on the questions of validity of the '320 patent and infringement. Complainant and the Commission investigative attorneys filed responses to the petition for review. No other petitions for review of the ID or government comments were received by the Commission.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For

background, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

**Written Submissions**

The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorneys are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on February 13, 1995. Reply submissions must be filed no later than the close of business on February 21, 1995. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.53 and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.53 and 210.58).

Issued: February 2, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–3142 Filed 2–7–95; 8:45 am]

BILLING CODE 7020–02–P

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–52 (Sub-No. 81X)]**

## The Atchison, Topeka and Santa Fe Railway Company—Abandonment Exemption—in Cowley County, KS

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 1.6 miles of main line from a common point at milepost 264.2 at the intersection of Chestnut Avenue and the centerline of the main line to be abandoned (1) southeasterly to Madison Avenue and (2) southwesterly to Washington Avenue, in Arkansas City, Cowley County, KS.

Santa Fe has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 10, 1995 (unless stayed pending reconsideration).[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 21, 1995.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Olson, The Atchison, Topeka and Santa Fe Railway Company, 1700 East Golf Road, Schaumburg, IL 60173.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Santa Fe has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 13, 1995. Interested persons may obtain a copy of the EA from SEA by writing to it at (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days

[1] The notice of exemption incorrectly named February 12, 1995, as the transaction consummation date. The consummation date cannot be earlier than the notice's effective date (50 days from the filing date). This notice of exemption was scheduled to become effective on March 8, 1995, but this date was extended to March 10, 1995, because Santa Fe filed a corrected line description on February 1, 1995.

[2] A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–3157 Filed 2–7–95; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that a proposed consent decree in *In Catherine and Philip J. Celestin,* Bankruptcy No. A–B–87–00183, Chapter 11, was lodged on January 20, 1995 with the United States Bankruptcy Court for the Western District of North Carolina.

Under the proposed Consent Order, the bankruptcy estate of the Celestins agrees to pay 80% of the net sales proceeds from the sale of the Carolina Production Plating facility located in Asheville, North Carolina to the Hazardous Substance Superfund. The lien holder, North Carolina National Bank also agrees to these terms. These funds are being paid to reimburse the United States for environmental response actions taken at the Carolina Production Plating facility in Asheville, North Carolina. No further response activities are anticipated at this site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *IN Catherine and Philip J. Celestin,* DOJ Ref. # 90–11–2–405A.

The proposed consent decree may be examined at the office of the United States Attorney, Room 306, U.S. Courthouse, 100 Otis Street, Asheville, North Carolina; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 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 Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.75 (25 cent per page reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95–3052 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

### Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 23, 1995, a proposed consent decree in *United States* v. *Citizens Utilities Co. of Illinois,* Civil Action No. 92 C 5132 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois. The proposed decree resolves the United States' claims again the defendant under the Clean Water Act, 33 U.S.C. 1251 *et seq.,* with respect to violations of Citizens' National Pollutant Discharge Elimination System (''NPDES'') permit at its West Surburban Treatment Plant #1 (''WSB #1'') in Bolingbrook, Will County, Illinois. Under the proposed decree, Citizens agrees to construct improvements and implement operational changes at WSB #1 to achieve and maintain compliance with its NPDES permit limits and to pay $490,000 to resolve the claims for civil penalties under the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20530, and should refer to *United States* v. *Citizens Utilities Co. of Illinois,* Civil Action No. 92 C 5132 (N.D. Ill.) and D.J. reference no. 90–5–1–1–3653.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirksen Bldg., 219 South Dearborn Street, Chicago, Illinois 60604; at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce Gelber,**

*Acting Chief, Environmental Enforcement Section.*

[FR Doc. 95–3050 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

### Notice of 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 consent decree in *United States v. District of Columbia,* Civil Action Nos. 84–2842 and 90–1643, was lodged on January 24, 1995 with the United States District Court for the District of Columbia. The Consent Decree settles two actions brought under the Clean Water Act (the ''Act''), 33 U.S.C. 1251, et seq., seeking injunctions and civil penalties for the District's violations of the Act, its National Pollutant Discharge Elimination System permit for operation of the Blue Plains sewage treatment plant, and an earlier consent decree covering the Blue Plains plant. Pursuant to the Consent Decree, defendant has agreed to pay a civil penalty of $500,000, to test and implement an experimental technology for reducing nitrogen discharges harmful to the Potomac River and the Chesapeake Bay, and to undertake additional actions to improve operation of the plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. District of Columbia,* DOJ Refs. #90–5–1–1–3598 and #90–5–1–1–2181A.

The proposed consent decree may be examined at the Consent Decree Library, 1120 G Street, 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 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 $55.00 (25

cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95–3051 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

## Notice of Lodging of Modified Consent Decree Pursuant to the Ocean Dumping Ban Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Supplemental Order on Consent Modifying the Consent Decree Entered on September 12, 1989, between the United States, the State of New Jersey and the Passaic Valley Sewerage Commissioners (''modified Consent Decree'') in *United States and the State of New Jersey v. Joint Meeting of Essex and Union Counties, et al.,* (D.N.J.) 89 Civ. 3339 (HAA), was lodged on January 31, 1995, with the United States District Court for the District of New Jersey.

The proposed modified Consent Decree requires that Passaic Valley Sewerage Commissioners (''PVSC'') implement beneficial use of 100% of its sludge product no later than June 31, 2001. However, the modified Consent Decree could require PVSC to implement beneficial use of 100% of its sludge product at earlier dates, depending upon the contractors PVSC procures to implement its beneficial use program. The United States, New Jersey and PVSC entered into the original Consent Decree on September 12, 1989. The Original Consent Decree and its modification enforce the Ocean Dumping Ban Act, 33 U.S.C. 1401 *et seq.* (''ODBA'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modified Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and the State of New Jersey v. Joint Meeting of Essex and Union Counties, et al.,* DOJ Ref. # 90–5–1–1–3505.

The proposed modified Consent Decree may be examined at the United States Attorney's Office for the District of New Jersey, Federal Building, Room 502, 970 Broad Street, Newark, NJ 07102; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed modified Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95–3053 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

## Notice of 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 amendment to the consent decree in United States *v.* Kodiak Reduction, Inc., *et al.,* Civil Action No. A92–750, was lodged on January 25, 1995 with the United States District Court for the District of Alaska. The complaint in this case alleged claims arising out of the discharge of seafood processing waste into waters off Kodiak Island, Alaska. The decree provides for construction and operation of a fishmeal plant to process these waters. The proposed amendment will establish additional effluent limitations and operating conditions on this plant.

Because the plant is needed to process waste in the fishing season due to begin at the end of January, the Department of Justice will receive, for a period of ten (10) days from the date of this publication, comments relating to the proposed amendment. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to United States *v.* Kodiak Reduction, Inc., *et al.,* DOJ Ref. # 90–5–1–1–3620.

The proposed amendment may be examined at the office of the United States Attorney, 222 W. 7th Ave., Anchorage, Alaska, the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 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 Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.25 payable to the Consent Decree Library.

**Bruce Gelber,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95–3049 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

# Antitrust Division

## Notice Pursuant to the National Cooperative Research and Production Act of 1993 High Performance Composites Cooperative Arrangement

Notice is hereby given that, on September 21, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BDM Federal, Inc., acting on behalf of the High Performance Composites Cooperative Arrangement (HPC), filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing an addition to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the new HPC member is Atlantic Research Corporation, Gainesville, VA, effective June 3, 1994.

No other changes have been made in either the membership or planned activity of the HPC. Membership remains open, and the HPC intends to file additional written notification disclosing all changes in membership.

On April 6, 1994, BDM Federal, Inc., acting on behalf of the HPC, filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 3, 1994 (59 FR 28899).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 95–3055 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Iodophors Joint Venture and Steering Committee

Notice is hereby given that, on December 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Iodophors Joint Venture and Steering Committee has filed written notification simultaneously with the Attorney

General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes consist of the addition of four new members: Recovery Engineering Inc., Minneapolis, MN; Safeway Industries Inc., Milwaukee, WI; Quim Casa de Mexico, represented by Technology Sciences Group, Washington, DC; and SYMBOLLON Corp., Sudbury, MA. In addition, the company name Diversely Corporation should be Diversely Corp., Livonia, MI.

No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture.

On December 15, 1987, the Iodophors Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 15, 1988, 53 FR 1074, as corrected by 53 FR 4232. The last notification was filed with the Department on June 9, 1992. A notice was published in the **Federal Register** on July 9, 1992, 57 FR 30511.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 95–3057 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on October 17, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Cap Gemini Sogeti, Houston, TX; OGCI Software, Inc., Houston, TX; Electronic Data Systems Corporation, Houston, TX; Lawrence Livermore National Laboratory, Livermore, CA; Silicon Graphics Incorporated, Houston, TX; Environmental Systems Research Institute, Inc., Relands, CA.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on July 12, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 1, 1994 (59 FR 45309).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 95–3056 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Compressor Crankshaft Failure Control Survey Project

Notice is hereby given that, on October 31, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Southwest Research Institute (SwRI'') has filed written notifications simultaneously with the attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project entitled ''The Compressor Crankshaft Failure Control Survey Project''. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Pipeline and Compressor Research Council, Dallas, TX has become a party to the group research project.

No other changes have been made in either the membership, corporate names, or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On May 13, 1994, SwRI filed is original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 1994, 58 FR 29825–26.

**Constance K. Robinson,**

*Director of Operators, Antitrust Division.*

[FR Doc. 95–3054 Filed 2–7–95; 8:45 am]

BILLING CODE 4410–01–M

# DEPARTMENT OF LABOR

## Office of the Secretary

## Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

February 2, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Managment and Budget, Room 10102, Washington, DC 20503 ((202) 395–7316).

*Type of Review:* Extension
*Agency:* Employment and Training Administration
*Title:* Work Application/Job Order Recordkeeping
*OMB Number:* 1205–0001
*Frequency:* On occasion
*Affected Public:* State, Local or Tribal Governments
*Number of Respondents:* 52
*Estimated Time Per Respondent:* 8 hours
*Total Burden Hours:* 416
*Description:* The work application is a recordkeeping requirement used to monitor State public employment service local offices regarding individuals seeking assistance in finding employment or employability development services. It is used to collect information such as application identification, qualifications, work experience and desired pay. It also includes services provided to the application, such as job development, referral to supportive services. Each State is required to retain basic documents for one year under 20 CFR 652.8(d)(5) which includes the information on work applications and job orders.

*Type of Review:* Revision
*Agency:* Employment and Training Administration

*Title:* ETA Data Validation Handbook No. 361
*OMB Number:* 1205–0055
*Frequency:* Annually
*Affected Public:* State, Local or Tribal Governments
*Number of Respondents:* 53
*Estimated Time Per Respondent:* 132 hours
*Total Burden Hours:* 6,996
*Description:* The Unemployment Insurance (UI) program is a mandatory benefit entitlement program administered by the States. The Secretary has the responsibility under Title II of the SSA to provide funds necessary for ''proper and efficient'' administration of State UI laws. Data provided to the Unemployment Insurance Service must be credible for use in the distribution of administrative funds as well as triggering the Extended Benefits Program and as economic indicators as well as general information for operating the program. Validation attempts to ensure the accuracy and compatibility of reported data.

*Type of Review:* Extension
*Agency:* Employment and Training Administration
*Title:* Attestation by Employers for Off-Campus work Authorization for F–1 Students
*OMB Number:* 1205–0315
*Agency Form Number:* ETA 9034
*Frequency:* On occasion
*Affected Public:* Individuals or households; State, Local or Tribal Governments; Business or other for-profit; Federal Government; Not-for-profit institutions
*Number of Respondents:* 2,500
*Estimated Time Per Respondent:* 1 hour 15 minutes
*Total Burden Hours:* 3,216
*Description:* The information provided on this form by employers seeking to use aliens admitted as students on F–1 visas in off-campus work will permit the Department of Labor to meet Federal responsibilities for program administration, management and oversight.

*Type of Review:* Extension
*Agency:* Employment and Training Administration
*Title:* Disaster Unemployment Assistance (DUA) Handbook Program Operating Forms
*OMB Number:* 1205–0051

| Form No. | Respondents | Frequency | Average time per response |
|---|---|---|---|
| ETA 81 | 11,000 | Once | 20 minutes. |
| ETA 81A | 3,800 | Once | 15 minutes. |
| ETA 82 | 11,000 | Once | 15 minutes. |
| ETA 83 | 11,000 | Six | 15 minutes. |
| ETA 84 | 235 | Once | 30 minutes. |

*Affected Public:* Individuals or households
*Total Burden Hours:* 23,983
*Description:* Public Law 100–707 (Sections 410 and 423) provides for benefit assistance to ''any individual unemployed as a result of a major disaster.'' The forms in Chapters III and VII of the DUA Handbook are used by State agencies in connection with the provision of this benefit assistance, unemployment, compensation claims and financial management.

*Type of Review:* Reinstatement
*Agency:* Assistant Secretary for Administration and Management, Directorate of Civil Rights
*Title:* Compliance Information Report (29 CFR Part 31, Title VI), Nondiscrimination—Disabled (29 CFR Part 32, Section 504), Nondiscrimination—Job Training Partnership Act (29 CFR Part 34, Section 167)
*OMB Number:* 1225–0046
*Frequency:* On occasion
*Affected Public:* State, Local or Tribal Governments; Not-for-profit institutions
*Number of Respondents:* 11 respondents; 5,381 recordkeepers
*Estimated Time Per Respondent:* 24 hours reporting; 30.04 hours recordkeeping
*Total Burden Hours:* 161,926
*Description:* The Directorate of Civil Rights has been delegated responsibility for enforcing equal opportunity and nondiscrimination laws pertaining to programs and activities that benefit from Department of Labor financial assistance. To ensure that services are provided equitably, various equal opportunity regulatory provisions require grantees to collect, maintain and report beneficiary characteristics data.

*Type of Review:* Reinstatement
*Agency:* Occupational Safety and Health Administration
*Title:* Course Evaluation
*OMB Number:* 1218–0173
*Agency Form Number:* OSHA 49
*Frequency:* On occasion
*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government
*Number of Respondents:* 10,000
*Estimated Time Per Respondent:* 10 minutes
*Total Burden Hours:* 1,667
*Description:* The OSHA Form 49 Course Evaluation form is used to collect feedback from students completing OSHA Training Institute/Education Center courses. Students evaluate course content, training environment, training aids, quality of course materials, and the effectiveness of laboratories, workshops and field trips. Data is used to assess if training objectives/goals are being achieved.

*Type of Review:* Extension
*Agency:* Employment Standards Administration
*Title:* Application for a Farm Labor Contractor Employee
*OMB Number:* 1215–0037
*Agency Number:* WH–512–MIS
*Frequency:* On occasion
*Affected Public:* Individuals or households; Business or other for-profit; Farms
*Number of Respondents:* 2,200
*Estimated Time Per Respondent:* 30 minutes
*Total Burden Hours:* 1,100
*Description:* The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration.

The form WH–512–MIS is an application form which provides the Department of Labor with information necessary to issue a certificate specifying that the farm labor contracting activities are authorized.

*Type of Review:* Extension
*Agency:* Employment Standards Administration
*Title:* Claim for Compensation by Dependents Information Reports
*OMB Number:* 1215–0155

*Agency Number:* CA–5; CA–5b; CA–1031; CA–1074; CA–1085; CA–1093; CA–1615; CA–1617; CA–1618

*Affected Public:* Individuals or households

*Frequency:* On occasion

| Form | Respondents | Average time per respondent |
|---|---|---|
| CA–5 | 235 | 90 minutes. |
| CA–5b | 70 | 90 minutes. |
| CA–1615 | 120 | 30 minutes. |
| CA–1617 | 600 | 30 minutes. |
| CA–1085 | 450 | 45 minutes. |
| CA–1031 | 1,700 | 15 minutes. |
| CA–1074 | 70 | 60 minutes. |
| CA–1093 | 50 | 30 minutes. |
| CA–1618 | 320 | 30 minutes. |
| Total Burden Hours | 1,835 | |

*Description:* These forms request information from survivors of a deceased Federal employee which verify dependent status when making a claim for benefits and on a periodic basis in accepted claims. Some of the forms are used to obtain information on claimed dependents in disability cases. The agency uses this information to ensure that survivor benefits are paid to the correct person(s) and in the correct amount.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 95–3085 Filed 2–7–95; 8:45 am]

BILLING CODE 4510–30–M

## Glass Ceiling Commission; Open Meeting by Teleconference

**SUMMARY:** Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and Section 9 of the Federal Advisory Committee Act (FACA) (pub. L. 92–262, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce an open meeting of the Commission for Monday, February 13, 1995 from 12:00 pm to 1:30 pm E.S.T. The meeting will be conducted by telephone teleconference. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking position in business. The Commission has the practical task of: (a) conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

**TIME AND PLACE:** The meeting will be held by teleconference, Monday February 13, 1995 (Eastern Standard Time) in the Department of Labor 5th Floor Seminar Room A. The meeting is open to the public, and will be held from 12 pm to 1:30 pm EST. This meeting will take the place of an earlier January 31st and February 1st meeting which had to be postponed.

The Commission will meet to discuss the status of the activities and tasks of the Commission. The agenda for the meeting include:

Review of Report

Individuals with disabilities should contact Ms. René A. Redwood at (202) 219–7342 no later than February 10, 1995 if special accommodations are needed.

Due to scheduling difficulties, we are providing less than 15 days of advance notice of this meeting.

**FOR FURTHER INFORMATION CONTACT:** Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 3rd day of February 1995.

**René A. Redwood,**

*Executive Director.*

[FR Doc. 95–3131 Filed 2–7–95; 8:45 am]

BILLING CODE 4510–23–M

## Women's Bureau; Commission on Family and Medical Leave; Notice of Meeting

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The Commission on Family and Medical Leave was established by an Act of Congress, the Family and Medical Leave Act, Pub. L. 103–3.

**TIME AND PLACE:** The meeting will be held on Tuesday, February 14, 1995, from 10 am to 12 Noon, on Capitol Hill in the Dirksen Senate Office Building, Room 562. Please take the Constitution Avenue entrance.

**PUBLIC PARTICIPATION:** The meeting will be open to the public. It will be in session from 10 am to 12 Noon. Seating will be available to the public on a first-come, first served basis. Handicapped individuals wishing to attend should contact the Office of the Commission to obtain appropriate accommodations. Individuals wishing to submit written statements should send 16 copies to Susan King, Executive Director, Commission on Family and Medical Leave, Room S–3002, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Susan King, Telephone (202) 219–4526; Ext. 102.

Signed at Washington, DC this 3rd Day of February, 1995.

**Susan King,**

*Executive Director, Commission on Leave.*

[FR Doc. 95–3084 Filed 2–7–95; 8:45 am]

BILLING CODE 4510–30–M

# COMMISSION OF FINE ARTS

## Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 16 February 1995 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC 20001 to discuss various projects affecting the

appearance of Washington, DC including buildings, memorials parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 30 January 1995.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 95–3042 Filed 2–7–95; 8:45 am]

BILLING CODE 6330–01–M

## NATIONAL SCIENCE FOUNDATION

### Environmental Assessment and Request for Comments; Notice

**AGENCY:** National Science Foundation.

**ACTION:** Notice of environmental assessment and request for comments.

**SUMMARY:** The National Science Foundation (NSF) has prepared an Environmental Assessment for the construction and operation of a Laser Interferometer Gravitational-Wave Observatory (LIGO) facility at a Louisiana State University site in Livingston Parish, Louisiana. LIGO is a scientific research program for the detection and study of cosmic gravitational waves. The program shall enhance our understanding of the nature of gravity and expand our knowledge of astrophysics. Possible effects of the project on wetlands have been mitigated by the acquisition and restoration of 39 acres of wetlands at the Cypress Island Nature Preserve. NSF is inviting public comment on the Environmental Assessment.

**DATES:** The NSF welcomes any comments on the environmental assessment. In order to be assured consideration comments must be received no later than March 10, 1995.

**ADDRESSES:** Comments may be addressed to Dr. David Berley, Program Manager for LIGO, National Science Foundation, 4201 Wilson Boulevard, Room 1015, Arlington, Virginia, 22230.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Berley, 703–306–1892.

Dated: February 3, 1995.

**Lawrence Rudolph,**

*Acting General Counsel, National Science Foundation.*

[FR Doc. 95–3093 Filed 2–7–95; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–213]**

### Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

**Environmental Assessment**

*Identificatjon of the Proposed Action*

CYAPCO has proposed to revise Technical Specification (TS) 3/4.4.9, ''Pressure Temperature Limits, Reactor Coolant System,'' Figures 3.4–3, 4, and 5, and the associated Bases section. The proposed action is in accordance with the licensee's amendment request dated April 7, 1994, as supplemented November 4, 1994.

*The Need for the Proposed Action*

NRC Information Notice 93–58, ''Nonconservatism in Low-Temperature Overpressure Protection for Pressurized-Water Reactors,'' alerted licensees of potential nonconservatisms associated with the Low Temperature Overpressurization Protection (LTOP) system resulting from pressure drop across the core. Upon review of this information, the Haddam Neck Plant adopted a conservative set of curves until new curves could be developed for the plant. These TS changes reflect the analysis performed to evaluate the brittle fracture requirements of 10 CFR Part 50, Appendix G and the ASME XI Code.

These changes will ensure that the desired margins of safety against nonductile failure of the reactor vessel are maintained through all modes of operation, especially when the reactor coolant system (RCS) is at low temperatures.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TS. The staff has concluded that the proposed TS changes involving the changes in TS 3/4.4.9, ''Pressure/Temperature Limits, Reactor Coolant System,'' Figures 3.4–3, 4, and 5, and the associated Bases Section adequately address the non-conservatisms identified in NRC Information Notice 93–58 and will ensure compliance with the 10 CFR Part 50, Appendix G requirements during normal modes of operation. The staff made this determination by reviewing the plant specific analysis to assure that the proposed heatup, cooldown, and hydrostatic test, pressure/temperature limit curves have been chosen to ensure the plant is operated safely. In addition, the new P/T curves are more restrictive and conservative than the current curves.

The proposed TS change will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite. And, there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

*Agencies and Persons Consulted*

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the

environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated April 7, 1994, as supplemented November 4, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland, this 1st day of February 1995.

For the Nuclear Regulatory Commission.

**Phillip F. McKee,**

*Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–3086 Filed 2–7–95; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–20]**

## Environmental Assessment and Finding of No Significant Impact Regarding Proposed License Amendment; Changing Expiration Date of Amended Facility Operating License No. R–37 Massachusetts Institute of Technology

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment extending the expiration date of Amended Facility Operating License No. R–37 (the license) for the Massachusetts Institute of Technology (MIT or the licensee) Research Reactor (MITR) from May 7, 1996, to August 8, 1999. This recaptures construction time between May 7, 1956, the issuance date of Construction Permit No. CPRR–5 and June 9, 1958, the issuance date of the license, and between May 24, 1974, the date reactor operations were terminated to modify the reactor under Construction Permit No. CPRR–118, and July 23, 1975, the date of issuance of Amendment No. 10 to the license which authorized a return to reactor operation.

**Environmental Assessment**

*Identification of Proposed Action*

By application dated March 31, 1994, as supplemented on September 29, and November 4, 1994, MIT requested that the expiration date of Amended Facility Operating License No. R–37 be extended from midnight, May, 7, 1996, to midnight, April 24, 2001. MIT has requested that four periods of time be recaptured:

(1) The period from May 7, 1956, the date of issuance of CPRR–5, until June 9, 1958, the issuance date of the license, or July 21, 1958, the date of initial criticality.

(2) The period from July 21, 1958, until June 1, 1959, during which the first reactor (MITR–I) was operated infrequently at low power for startup testing.

(3) From May 24, 1974, the date the reactor was shut down to perform modifications to the facility under Construction Permit No. CPRR–118, (CPRR–118 was issued on April 9, 1973, but component acquisition problems delayed the reactor shut down until May 24, 1974) until August 14, 1975, the date of initial criticality of the modified reactor (MITR–II). The NRC issued Amendment No. 10 to the license on July 23, 1975, which authorized operation of the modified reactor.

(4) The period from August 14, 1975, until April 15, 1976, during which the modified reactor was operated infrequently at low power for startup testing.

The staff has determined that the time between May 7, 1956, the issuance date of Construction Permit No. CPRR–5 and June 9, 1958, the issuance date of the license, and between May 24, 1974, the day reactor operations where terminated to modify the reactor under Construction permit No. CPRR–118, and July 23, 1975, the date of issuance of Amendment No. 10 to the license which authorized a return to reactor operation, represents time that was not available to the licensee due to construction. This period of time is 1188 days, which when added to the expiration date of the Amended Facility Operating License of May 7, 1996, results in a extended expiration date of August 8, 1999.

The staff has also determined that the time (a) between July 9, 1958, the issuance date of the license, through July 21, 1958, the date of initial criticality, to June 1, 1959, the end of low power testing, and (b) between July 23, 1975, the date of issuance of Amendment No. 10, through August 14, 1975, the date of initial criticality for the modified reactor, to April 15, 1976, the end of low power testing, cannot be added to extend the expiration date of the license. This is because this time was authorized by NRC in the license for reactor operation, was available to the licensee for operations and, after initial criticality in both cases, was used by the licensee for low power testing. A license term of 40 years from the date of issuance of the operating license is permitted by NRC regulations, specifically 10 CFR 50.51. Commission approval of the proposed amendment would be consistent with recent NRC actions for nuclear power reactors.

*Need for Proposed Action*

The granting of this request would allow the licensee to operate the facility for approximately three years and three months beyond the current license expiration date, thus recapturing construction periods. Over 30 similar extensions have been issued to other licensees. Without issuance of the proposed license amendment, an application for license renewal would be required to be developed and submitted before the expiration of the current license on May 7, 1996, or the MITR would be shut down and a decommissioning plan required to be developed and submitted.

*Environmental Impact of the proposed Action*

The anticipated impact of the facility on the environment was evaluated in the Environmental Impact Appraisal for the MITR dated July 23, 1975. This appraisal was prepared for the issuance of Amendment No. 10 to the license, which authorized a return to operation for the facility at a power level of 5 MW(t), after modifications were completed to the reactor as authorized by construction permit No. CPRR–118. The descriptions in and findings of that appraisal are still valid. That appraisal concluded that there will be no significant environmental impact associated with the licensing of the MITR to be operated at 5 MW(t).

The licensee has not requested any changes to the facility as part of this amendment request. The environmental effects of accidents which were discussed and considered negligible in the 1975 appraisal have not changed.

Operating data is available to replace the estimates of the environmental effects of facility operation in the 1975 appraisal. The actual environmental effects of facility operation from July 1, 1984 (FY 85), to June 30, 1994 (FY 94), were obtained from the licensee.

Environmental surveys within a quarter mile of the facility detected an average (averaged because readings are

from multiple monitoring stations) annual radiation exposure as follows:

| Year (FY) | Average readings (mrem) |
|---|---|
| 1994 | 0.4 |
| 1993 | 0.5 |
| 1992 | 0.2 |
| 1991 | 0.1 |
| 1990 | 0.1 |
| 1989 | 0.2 |
| 1988 | 0.2 |
| 1987 | 1.2 |
| 1986 | 1.8 |
| 1985 | 2.2 |

Annual airborne effluent releases from the facility are given in the next table. FY 94 is presented in two half years periods because amendments to 10 CFR Part 20 became effective on January 1, 1994, which changed the regulatory limits for release concentrations to the environment for certain radionuclides. Total curies released during FY 94 is comparable to past years. The percent of Regulatory Limit column represents the percent of the regulatory limit for concentration of radionuclides in air after taking into account dilution from the release point.

| Year (FY) | Stack release (curies) | % of regulatory limit |
|---|---|---|
| 1/1/94 to 6/30/94 | 398 | 21.7 |
| 7/1/93 to 12/31/93 | 275 | 4.1 |
| 1993 | 923 | 6.0 |
| 1992 | 728 | 4.9 |
| 1991 | 684 | 4.4 |
| 1990 | 542 | 3.5 |
| 1989 | 1529 | 9.8 |
| 1988 | 2627 | 17 |
| 1987 | 4223 | 30 |
| 1986 | 3797 | 26 |
| 1985 | 4076 | 26 |

Annual liquid effluent releases are as follows:

| Year (FY) | Total activity (curies) |
|---|---|
| 1994 | 0.025 |
| 1993 | 0.007 |
| 1992 | 0.036 |
| 1991 | 0.121 |
| 1990 | 0.080 |
| 1989 | 0.110 |
| 1988 | 0.072 |
| 1987 | 0.098 |
| 1986 | 0.288 |
| 1985 | 0.099 |

Low level solid waste shipped from the facility is given in cubic feet and total activity in curies. Increased shipments in FY 1994 and FY 1993 represent an effort by the licensee to remove solid waste from the facility before waste disposal site closures prevented future shipments of low level solid waste.

| Year (FY) | Cubic feet | Total activity (curies) |
|---|---|---|
| 1994 | 457 | 0.925 |
| 1993 | 210 | 0.218 |
| 1992 | 127 | 0.011 |
| 1991 | 116 | 0.125 |
| 1990 | 192 | 0.035 |
| 1989 | 135 | 0.053 |
| 1988 | 60 | 0.003 |
| 1987 | 112 | 0.082 |
| 1986 | 75 | 0.097 |
| 1985 | 120 | 0.067 |

These releases are well within regulatory limits and will not have a significant impact on the environment. Releases for the proposed license extension are estimated to continue at levels well within regulatory limits.

*Alternative Use of Resources*

One alternative to the proposed amendment request is to deny the request. If the request is denied, the MITR would be shut down or an application for license renewal would be developed and submitted before expiration of the current license on May 7, 1996. Shutting the reactor down would result in the loss of an educational tool for the training of students and the conduct of research in many areas including medical therapy. If the request is denied and the licensee proposes to renew the license, resources would have to be expended on the part of the licensee and the Commission sooner than if the request for license extension is granted. Denial of the application would result in no change in current environmental impacts.

*Agencies and Persons Consulted*

The NRC staff consulted no other agencies or persons in reviewing the request from the licensee.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for amendment dated March 31, 1994, as supplemented, the Safety Evaluation prepared by the staff, the Negative Declaration Regarding Facility Operating License R–37 for the Massachusetts Institute of Technology Research Reactor dated July 23, 1975, and the Environmental Impact Appraisal for the Massachusetts Institute of Technology Reactor dated July 23, 1975. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, D.C. 20555.

Dated at Rockville, Maryland, this 2nd day of February 1995.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Project Support, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–3087 Filed 2–7–95; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on February 15 and 16, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to (5 U.S.C. 552b(c)(4)), with the exception of a 1–2 hour session on Thursday, February 16, 1995, that will be open to the public.

The agenda for the subject meeting shall be as follows:

Wednesday, February 15, 1995—8:30 a.m. until the conclusion of business; and

Thursday, February 16, 1995—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Westinghouse COBRA/TRAC thermal hydraulic code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: February 1, 1995.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 95–3090 Filed 2–7–95; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–361 and 50–362]**

## Southern California Edison Co.; San Diego Gas and Electric Co.; the City of Riverside, California; the City of Anaheim, California; and San Onofre Nuclear Generating Station, Units Nos. 2 and 3

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the proposed corporate restructuring of San Diego Gas & Electric Company (SDG&E), one of the co-owners of San Onofre Nuclear Generating Station, Units 2 and 3. By letter dated November 11, 1994, Richard A. Meserve of Covington & Burling, Counsel for SDG&E, informed the Commission that a corporate restructuring of SDG&E has been proposed that will result in the creation of a holding company under the temporary name SDO Parent Co., Inc. (''Parent Company'') of which SDG&E would become a subsidiary. Under the restructuring, the holders of SDG&E common stock will become the holders of common stock of the Parent Company on a share-by-share basis. After the restructuring, SDG&E will continue to be a public utility providing the same utility services as it did immediately prior to the reorganization. SDG&E will continue to be a licensee of the San Onofre units, and no transfer of the operating licenses or interests in the units will result from the restructuring. Control of the operating licenses for the San Onofre units, now held by SDG&E and its co-owners, will remain with SDG&E and the same owners and will not be affected by the restructuring.

Pursuant to 10 CFR part 80, the Commission may approve the transfer of control of a license, after notice to interested persons. Such action is contingent upon the Commission's determination that the holder of the license and the transfer of such control is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Dated at Rockville, Maryland, this 31st day of January 1995.

**Mel B. Fields,**

*Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–3088 Filed 2–7–95; 8:45 am]

BILLING CODE 7590–01–M

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## Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 71st meeting on February 21–22, 1995, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6) and to project information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

*Tuesday, February 21, 1995—8:30 A.M. until 6:00 P.M.*

*Wednesday, February 22, 1995—8:30 A.M. until 6:00 P.M.*

During this Meeting the Committee plans to consider the following:

A. *Proposed EPA Standards for Land Disposal of Low-Level Radioactive Waste*—The Committee will hear presentations and hold discussions with representatives of the Environmental Protection Agency and NRC staff on the pre-proposal version of a standard for land disposal of low-level waste. The emphasis will be on commercial disposal.

B. *Meet with the Director, NRC's Division of Waste Management, NMSS*—The Director will provide information to the Committee on current waste management issues: issues may include groundwater travel time associated with a mined geologic disposal system, a branch technical position on low-level radioactive waste and key technical uncertainties associated with high-level waste disposal.

C. *Review Draft Regulatory Guide DG–3009*—The Committee will review, ''Topical Guidelines For The Licensing Support System.'' The Licensing Support System is an electronic information management system designed to provide for the entry of the access to potentially relevant licensing information.

D. *Model Validation*—The NRC staff will discuss perspectives from a joint coordination effort between the NRC and the Swedish Nuclear Power Inspectorate on validation strategies for computer models and conceptual models. Portions may be closed to protect information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b(c)(4).

E. *Preparation of ACNW Reports*—The Committee may prepare reports on issues considered during this meeting and possible additional topics such as safety goals applicable to nuclear waste disposal and generic issues involving the direction of radioactive waste research.

F. *Lessons Learned From the Attempt to Site a Low-Level Radioactive Waste Disposal Facility in Martinsville, Illinois*—The Committee will hold a discussion with individuals formerly associated with the Illinois Siting Commission to gain their perspective on the Martinsville experience.

G. *Meeting with NRC Commissioner de Planque*—The Committee will meet with Commissioner de Planque to discuss items of interest. Topics might include: the use of multipurpose canisters in high-level radioactive waste disposal, the role of expert judgment in high-level waste disposal, and DOE's program approach for site suitability at Yucca Mountain.

H. *Meeting with the Director, NRC's Office of Nuclear Regulatory Research*—The Committee will take part in a discussion with the Director on his vision of safety research over the coming ten years with a focus on radioactive waste disposal.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to ACNW members and ACNW staff. A portion of this session may be

closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

J. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 3, 1995.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 95–3152 Filed 2–7–95; 8:45 am]

**BILLING CODE 7590–01–M**

## Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation; Draft Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft statement of policy.

**SUMMARY:** The Nuclear Regulatory Commission is issuing this draft policy statement for public comment. The draft policy statement emphasizes the importance that the Commission places on maintaining a quality-conscious environment in which all employees in the nuclear industry feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining this type of an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement would be applicable to licensed activities of all NRC licensees and their contractors and subcontractors.

**DATES:** The comment period expires April 10, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** *Submit written comments to:* Secretary, Attn: Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741.

**SUPPLEMENTARY INFORMATION:**

### Background

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns [1] and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility.

In the past, employees have raised important issues and as a result, the public health and safety has benefited. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to the individual employee, the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting allegers against retaliation. In its report (NUREG–1499, ''Reassessment of the NRC's Program for Protecting Allegers Against Retaliation,'' January 7, 1994) the review team made numerous recommendations, including several recommendations that addressed the need to encourage responsible licensee action with regard to encouraging a quality-conscious environment in which to raise safety concerns (recommendations II.A–1, II.A–2, and II.A–4). This policy statement is being issued after considering those recommendations and the bases for them. The policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors,[2] although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of an employee concerns program) may not be practical or may not be needed for very small licensees that have only a few employees and a very simple management structure.

[1] Throughout this notice, the terms ''concerns,'' ''a safety problem,'' or ''safety concerns'' refer to concerns associated with issues within the Commission's jurisdiction, whether or not a violation of NRC requirements is involved.

[2] Throughout this Notice, the term ''contractor'' includes contractors and subcontractors of licensees.

**Statement of Policy**

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (See, e.g., 10 CFR 30.7 and 50.7). Under the Energy Reorganization Act of 1974, as amended, the Department of Labor (DOL) also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred. However, the processes for providing personal remedies and taking enforcement action can be time-consuming. To the extent that retaliation can be avoided altogether or addressed and resolved quickly when it occurs, the interests of all parties are well served.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's contractor), as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (January 24, 1989; 54 FR 3424), management must provide the leadership that nurtures and perpetuates the safety environment.

The Commission is issuing this statement to state clearly its expectation that licensees will ensure the freedom for all employees to raise concerns both to their management and to the NRC without fear of retaliation. In developing this policy statement, the Commission considered the need for:

(1) Licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and to the NRC, without fear of retaliation;

(2) Improving contractors' awareness of their responsibilities in this area;

(3) Senior management of licensees and contractors to become directly involved in investigating and addressing or resolving cases of alleged discrimination; and

(4) Employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

**Effective Processes for Problem Identification and Resolution**

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. Effective problem identification and resolution processes are essential to ensuring safety. Thus, it is important that each licensee establish a quality-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A quality-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with this type of an environment include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors is also an important factor in achieving a work environment in which employees feel free to raise concerns. In addition to communicating management expectations, training can clarify options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC. Training of supervisors may also minimize the potential that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self-assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessment, prompt corrective action should be taken.

A basic measure of licensee success in this area is the degree to which concerns are identified and resolved through established internal procedures. The use of normal processes (e.g., raising issues to the employee supervisors or utilizing quality assurance programs) for problem identification and resolution is both more efficient and less likely to result in conflict. While licensees should encourage employees to resolve problems using normal processes, safety considerations dictate that no method of raising concerns should be discouraged. Thus, each licensee should develop a dual focus: achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management; and ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

It is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that they do not have legitimate concerns. Even in a generally good environment, some employees may not be comfortable in raising concerns through the normal channels. From a safety perspective, these concerns need to be captured by the licensee's resolution processes. Therefore, it is important that licensees provide methods for raising concerns that can serve as internal ''escape valves'' or ''safety nets.''[3] Examples of these methods include:

(1) An ''open-door'' policy that allows the employee to bring the concern to a higher-level manager;

(2) A policy that permits employees to raise concerns to the licensee's quality assurance group; or

(3) Some form of an employee concerns program.

NUREG–1499 may provide some helpful insights on various employee-concern programs. The success of a licensee ''safety-net'' program is influenced by

[3] In developing these programs, it is important for reactor licensees to be able to capture all concerns, not just concerns related to ''safety related'' activities covered by 10 CFR Part 50, Appendix B. For example, concerns relating to environmental, safeguards, and radiation protection issues should also be captured.

the program's accessibility to employees, prioritization processes, independence, ability to protect the identity of employees, and adequate resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees is a necessary element of these programs.

**Improving Contractors Awareness of Their Responsibilities**

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10, and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7). Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against *both* the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee.

The Commission is concerned that a large number of discrimination complaints are made by employees of contractors. The Commission expects its licensees to take action so that:

(1) Each contractor is aware of the applicable regulations that prohibit discrimination;

(2) Each contractor is aware of its responsibilities in fostering an environment for raising concerns;

(3) The licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and

(4) Contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

**Involvement of Senior Management in Cases of Alleged Discrimination**

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees who have raised concerns, including personnel actions by contractors, have a well-founded, legitimate non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate non-discriminatory reasons. If employees allege retaliation for engaging in protected activities, senior licensee management should become involved, review the particular facts, and consider or reconsider the action.

In some cases, management may desire to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the dispute is being resolved. In addition, this approach encourages licensees and employees to resolve their differences without the need for NRC or DOL involvement.

Nothing in this policy statement should be taken to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to resolve promptly situations involving alleged discrimination internally, with minimal disruption of the work place and without government involvement. Because of the complex nature of labor-management conflicts, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution is in the best interests of both the licensee and the employee. For this reason, the Commission has recently amended its enforcement policy (10 CFR Part 2, Appendix C) to provide greater consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. 59 FR 60697 (November 28, 1994).

A licensee may conclude after a full review that an adverse action against an employee is warranted.[4] The Commission recognizes the need for licensees to take disciplinary action when such action is justified. Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

**Responsibilities of Employees**

As emphasized above, the responsibility for maintaining a quality-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, since it is the licensee, and not the Commission, who has the primary responsibility for, and is most able to ensure, safe operation of nuclear

[4] When other employees know that the individual who was the recipient of an adverse action may have engaged in protected activities, it may be appropriate for the licensee to let the other employees know, consistent with privacy considerations, that (1) management reviewed the matter and determined that its action was warranted, (2) the action was not in retaliation for engaging in protected activity and the reason why, and (3) licensee management continues to encourage them to raise issues. This may reduce any perception that retaliation occurred.

facilities and safe use of nuclear materials.[5] Employees have a variety of responsibilities to their employers to raise concerns to them, based on employment contracts, employers' rules, and NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically perform functions to meet monitoring requirements, the Commission believes that all employees have a responsibility to raise concerns to licensees if they identify safety issues[6] so that licensees can address them before an event with safety consequences occurs.

The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Retaliation against employees who, in good faith, attempt to carry out this responsibility cannot and will not be tolerated.

The Commission's expectation that employees will raise safety concerns to licensees does not mean that employees may not come to the NRC. The Commission encourages employees, when they are not satisfied that licensees have been responsive to their concerns, or for that matter at any time when they believe that the Commission should be aware of their concerns, to come to the NRC. But the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. This is because the licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with concerns raised by employees. The NRC can only serve as a supplementary avenue for raising concerns, not the primary conduit. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employees should be aware that except in limited fact-specific instances, advising the Commission of safety information would not absolve an employee of his or her duty also to inform the employer of matters that could bear on public, including worker, health and safety. Examples of those exceptions would include situations in which the employee had a reasonable expectation that he or she may be subject to retaliation for raising an issue to his or her employer even if an alternative internal process is used, situations where the licensee has threatened adverse action for identifying noncompliances or other safety concerns, and circumstances in which the employee believes that supervisors and management may have engaged in wrongdoing and that raising the matter internally could result in a cover-up or destruction of evidence.

The Commission cautions licensees that although licensees should expect employees to normally raise issues to them, disciplining employees for not doing so when they have come directly to the NRC will be closely scrutinized by the Commission. The Commission will give high priority to investigating allegations of such discrimination. Whether it was reasonable for an employee not to have raised a safety concern to the licensee depends on all the relevant facts and circumstances in the particular situation. If disciplinary action is found to have occurred solely because the person came to the NRC, enforcement action will be taken against the licensee.

**Summary**

In summary, the Commission expects that NRC licensees will establish quality-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

(a) The Commission expects that each of its licensees will:

(1) With the exception of relatively small licensees with few employees, have a defined alternate method for raising and addressing concerns internally beyond the normal process of identifying concerns to supervisors;

(2) Inform its employees and supervisors, including contractor and subcontractor employees and supervisors, of (a) the importance of raising concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC; and

(3) Address all potential safety and compliance concerns. For reactor licensees this means their programs should not focus solely on concerns related to ''safety-related'' activities.

(b) In situations where licensees use contractors to assist them in carrying out licensed activities, the Commission expects that:

(1) Each contractor or subcontractor will be made aware of the applicable regulations which prohibit discrimination;

(2) Each contractor or subcontractor will be made aware of its responsibility to foster an environment in which employees are free to raise concerns, and of the need to provide training for supervisors and employees; and

(3) The licensee will have the ability to oversee the contractor's or subcontractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will get directly involved, review the particular facts, consider or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a quality-conscious environment. The Commission expects that each employee will raise concerns to the employer when the employee identifies a safety or compliance issue. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. Except in limited circumstances, the NRC should be viewed as a safety valve and not as a substitute forum for raising safety concerns.

This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. However, if a licensee has not met this obligation, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action can and will be taken against the

[5] The expectation that employees provide safety and compliance concerns to licensees is not applicable to concerns of possible wrongdoing by NRC employees or NRC contractors. Such concerns are subject to investigation by the NRC Office of Inspector General. Concerns related to fraud, waste or abuse in NRC operations or NRC programs including retaliation against a person for raising such issues should be reported directly to the NRC Office of Inspector General. The Inspector General's toll free hotline is 800–233–3497.

[6] Except in the area of radiological working conditions, the Commission has not codified this obligation. Licensees are required by 10 CFR 19.12 to train certain employees in their responsibility to raise issues related to radiation safety.

licensee, its contractors, and the involved individual supervisors.

The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.

Dated at Rockville, Maryland, this 2nd day of February, 1995.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 95–3089 Filed 2–7–95; 8:45 am]

BILLING CODE 7590–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### Disaster Relief

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of disaster relief in response to California floods.

**SUMMARY:** The Pension Benefit Guaranty Corporation is waiving penalties for certain late payments of premiums, is forgoing assessment of penalties for failure to comply with certain information submission requirements, and is extending the deadlines for complying with certain requirements of its administrative review and standard and distress termination regulations. This relief is generally available to persons residing, in, or whose principal place of business is within, an area designated by the Federal Emergency Management Agency as affected by the major disaster declared by the President of the United States on account of the severe floods in California.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation (''PBGC'') administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), 29 U.S.C. 1001 *et seq.* Under ERISA and the PBGC's regulations, a number of deadlines must be met in order to avoid the imposition of penalties or other consequences. Five areas in which the PBGC is providing relief are (1) penalties for late payment of premiums due the PBGC, (2) ERISA section 4071 penalties for failure to provide required notices or other material information by the applicable time limit, (3) deadlines for filing a standard termination notice and distributing plan assets in a standard termination, (4) deadlines for filing a distress termination notice and, in the case of a plan that is sufficient for guaranteed benefits, issuing notices of benefit distribution and completing the distribution of plan assets, and (5) deadlines for filing requests for reconsideration or appeals of certain agency determinations.

On January 10, 1995, the President of the United States declared, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster exists because of the severe floods in California. At this time, thirty-eight California counties are designated areas (within the meaning of Federal Emergency Management Agency (''FEMA'') regulations; 44 CFR 205.2(a)(5)).

Given the severity of this major disaster, as the Executive Director of the PBGC, I have decided to provide relief from certain PBGC deadlines and penalties. For purposes of premium penalties, section 4071 penalties, and standard termination deadlines, this notice is applicable with respect to plans whose administrators' or sponsors' principal place of business, or for which the office of a service provider, bank, insurance company, or other person maintaining information necessary to meet the applicable deadlines, is located in a designated disaster area. For purposes of filing requests for reconsideration or appeals, this notice is applicable to any aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within such an area.

### Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment required to be made on or after January 6, 1995, and before March 2, 1995, if the payment is made by March 2, 1995. The PBGC is not permitted by law to waive late payment interest charges. (ERISA section 4007(b); 29 CFR 2610.7 and 2610.8(b)(3).)

### Section 4071 penalties

The PBGC will not assess a section 4071 penalty for a failure to file any of the following notices that were, or will be, required to be filed with the PBGC on or after January 6, 1995, and before March 2, 1995, if the notice is filed by March 2, 1995:

(1) Post-distribution certification for single-employer plan (PBGC Form 501 or 602; ERISA section 4041(b)(3)(B) or (c)(3)(B); 29 CFR 2617.28(h) or 2616.29(b)),

(2) Notice of termination for multiemployer plans (ERISA section 4041A; 29 CFR 2673.2),

(3) Notice of plan amendments increasing benefits by more than $10 million (ERISA section 307(e)), and

(4) Reportable event notice, *except* for reportable events related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or transactions involving a change in contributing sponsor or controlled group (29 CFR 2615.21, 2615.22, and 2615.23), or reportable events described in amended ERISA section 4043(c)(9)–(12). (Subsection (b) of section 4043 as it presently appears in 29 U.S.C. 1343 was redesignated as subsection (c) and amended, in part, with the addition of new reportable events in paragraphs (9) through (12) by the Retirement Protection Act of 1994, Subtitle F, Title VII, Uruguay Round Agreements Act, Sec. 771(c)(3), Pub. L. 103–465, 108 Stat. 5042 (1994) (the (''RPA amendments'').)

The PBGC will not assess a section 4071 penalty for a failure to provide certain supporting information and documentation when any of the following notices is timely filed:

(1) Notice of failure to make required contributions totaling more than $1 million (including interest) (PBGC Form 200; ERISA section 302(f)(4); 29 CFR 2615.31). The timely filed notice must include at least items 1 through 7 and items 11 and 12 of Form 200; the responses to items 8 through 10, with the certifications in items 11 and 12, may be filed late.

(2) Notice of a reportable event related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or a transaction involving a change in contributing sponsor or controlled group. The timely filed notice must include at least the information specified in 29 CFR 2615.3(b)(1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b)(6) through (9) and 2615.3(c)(5) and (6), as applicable.

(3) Notice of a reportable event described in the RPA amendments for

which notice is required no later than 30 days after the event occurs.

(A) If the event is reportable under both the RPA amendments and 29 CFR 2615, the notice will be considered timely filed if the notice satisfies the requirements described in paragraph (2) above.

(B) If the event is reportable only under the RPA amendments, the notice will be considered timely filed if the notice includes at least the information specified in 29 CFR 2615.3(b)(1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b)(6) through (9).

(4) Notice of a reportable event described in the RPA amendments for which notice is required at least 30 days before the event occurs. The notice will be considered timely filed if the filer makes a good faith effort to include with the notice at least the information specified in 29 CFR 2615.3(b)(1) through (5); the information specified in 29 CFR 2615.3(b)(6) through (9) and 2615.3(c)(5) and (6), as applicable, may be filed late and should be filed as soon thereafter as it is available.

This relief applies to notices that were, or will be, required to be filed with the PBGC on or after January 6, 1995, and before March 2, 1995, provided that all supporting information and documentation are filed by March 2, 1995.

### Standard and Distress Termination Notices and Distribution of Assets

With respect to a standard termination for which the standard termination notice is required to be filed, or the distribution of plan assets is required to be completed, on or after January 6, 1995, the PBGC is (pursuant to 29 CFR 2617.25(a)(2) and 2617.28(f)(4)) extending to March 2, 1995, the time within which the standard termination notice must be filed (and, thus, the time within which notices of plan benefits must be provided) and the time within which the distribution of plan assets must be completed. With respect to a distress termination for which the distress termination notice is required to be filed or, in the case of a plan that is sufficient for guaranteed benefits, other actions must be taken on or after January 6, 1995, the PBGC is (pursuant to 29 CFR 2616.10(a) and 2616.24(d)) extending to March 2, 1995, the time within which the termination notice must be filed and, in the case of a plan that is sufficient for guaranteed benefits, notices of benefit distribution must be provided and plan assets must be distributed. In addition, as noted above, the PBGC is providing relief from penalties for late filing of the post-distribution certification.

### Requests for Reconsideration or Appeals

For persons who are aggrieved by certain agency determinations and for whom a request for reconsideration or an appeal is required to be filed on or after January 6, 1995, and before March 2, 1995, the PBGC is (pursuant to 29 CFR § 2606.4(b)) the time for filing to March 2, 1995.

### Applying for Waivers/Extensions

A submission to the PBGC to which a waiver or an extension is applicable under this notice should be marked in bold print ''**CALIFORNIA FLOOD RELIEF**, County of (fill in appropriate county name and state)'' at the top center.

Issued in Washington, DC this 3rd day of February, 1995.

**Martin Slate,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 95–3107 Filed 2–7–95; 8:45 am]

BILLING CODE 7708–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

### Summary of Proposal(s):

(1) *Collection title*: Representative Payee Monitoring.

(2) *Form(s) submitted*: G–99a, G–99c.

(3) *OMB Number*: 3220–0151

(4) *Expiration date of current OMB clearance*: April 30, 1995

(5) *Type of request*: Revision of a currently approved collection.

(6) *Respondents*: Individuals or households.

(7) *Estimated annual number of respondents*: 6,000

(8) *Total annual responses*: 6,535.

(9) *Total annual reporting hours*: 2,032.

(10) *Collection description*: Under Section 12(a) of the RRA, the Railroad Retirement Board (RRB) is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

**ADDITIONAL INFORMATION OR COMMENTS** Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 95–3047 Filed 2–7–95; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–35331; File No. 265–19]**

### Consumer Affairs Advisory Committee; Meeting

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting of the Securities and Exchange Commission (''Commission'') Consumer Affairs Advisory Committee (''Committee'').

**SUMMARY:** This is to give notice that the Securities and Exchange Commission Consumer Affairs Advisory Committee will meet on February 21, 1995, in Room 1C30 at the Commission's main offices, 450 Fifth Street, NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

**ADDRESSES:** Written comments should be submitted in triplicate and should refer to File No. 265–19. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Nancy M. Smith, Director, Office of Consumer Affairs, (202) 942–7040; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Consumer

Advisory Committee hereby gives notice that it will meet on February 21, 1995, in Room 1C30 at the Commission's main offices, 450 Fifth Street, NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public.

The Committee's responsibilities include assisting the Commission in identifying investor problems and being more responsible to their needs. The Committee will explore fundamental issues of concern to investors, including matters currently under consideration by the SEC and topics of emerging concern to investors and the financial services industry.

The purpose of this meeting will be to consider disclosure reform proposals; municipal securities; litigation reform; broker-dealer sales practices; and investor educational projects to be undertaken by the Office of Consumer Affairs.

Dated: February 3, 1995.

**Jonathan G. Katz,**

*Advisory Committee Management Officer.*

[FR Doc. 95–3243 Filed 2–6–95; 1:13 pm]

**BILLING CODE 8010–01–M**

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**[Release No. 34–35315; File No. SR–CBOE–95–11]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

February 1, 1995.

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 January 26, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to incorporate in its rules listing standards applicable to options on securities issued in certain corporate restructuring transactions. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

### 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*

1. Purpose

The Exchange proposes to amend its rules to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions (''New Securities''). Currently, certain of the Exchange's rules preclude the listing of options on any security until that security has been actively traded at or above a specific price level for a certain period of time. For example, under Exchange Rule 5.3, Interpretation and Policy .01(b)(1), trading volume in an underlying security must be at least 2,400,000 shares during the preceding twelve months (the ''Volume Test''). Further, under Exchange Rule 5.3, Interpretation and Policy .01(b)(2), the market price for an underlying security must be at least $7.50 for the majority of business days during the three calendar month period preceding the date the security is selected as an underlying security (the ''Price Test'').

The proposed rule change would facilitate the earlier listing of options on New Securities by permitting the Exchange to determine whether a New Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of an outstanding equity security (the ''Original Security'') previously issued by the issuer of the New Security (or an affiliate thereof). Specifically, if (a) the aggregate market value, assets or revenue attributable to a New Security is at least a stated percentage of the same measure attributable to the Original Security and if a stated minimum value of assets or revenues represented by the New Security, as applicable, is satisfied or (b) the aggregate market value of the New Security is not less than $500 million,[1] then the Exchange would be permitted to determine whether a New Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of the Original Security. Reference may be made to the trading volume and market price history of the Original Security only for trading days occurring prior to the ex-date for the transaction in which the New Security is issued[2] and prior to any trading day for which these tests are determined to be satisfied by reference to the trading volume and market price history of the New Security. If reference is made to either the trading volume or market price history of the Original Security for this purpose for any period of time, then reference must be made to both such criteria in respect of the Original Security for that period.

In addition, if the New Security is to be listed on an exchange or in an automatic quotation system that has an initial listing requirement equivalent to

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[1] The proposed rule change would apply to a New Security if at least one of the following conditions is met:

(1) Any one or more of (A) the aggregate market value of the New Security, (B) the aggregate book value of the assets attributed to the business represented by the New Security, or (C) the revenues attributed to the business represented by the New Security are at least 25% of the same measure determined with respect to the Original Security or the business represented by the Original Security, as applicable, calculated in a comparable manner on a basis that reflects the inclusion of the business represented by the New Security, provided that in the case of the qualification of a New Security under clause (B), the aggregate book value of the assets attributed to the business represented by the New Security is not less than $50 million, and in the case of the qualification of a New Security under clause (C), the revenues attributed to the business represented by the New Security are not less than $50 million;

(2) Any one or more of (A) the aggregate market value of the New Security, (B) the aggregate book value of the assets attributed to the business represented by the New Security, or (C) the revenues attributed to the business represented by the New Security are at least 33⅓% of the same measure determined with respect to the Original Security or the business represented by the Original Security, as applicable, calculated in a comparable manner on a basis that reflects the exclusion of the business represented by the New Security, provided that in the case of the qualification of a New Security under clause (B), the aggregate book value of the assets attributed to the business represented by the New Security is not less than $50 million, and in the case of the qualification of a New Security under clause (C), the revenues attributed to the business represented by the New Security are not less than $50 million; or

(3) The aggregate market value represented by the New Security is at least five hundred million dollars ($500,000,000).

[2] Under the proposed rule change, options contracts may not initially be listed for trading in respect of a New Security until such time as shares of the New Security are issued and outstanding and are the subject of trading that is not on a ''when issued'' basis or in any other way contingent on the issuance or distribution of the shares.

the requirement of paragraph (a)(2) of Interpretation and Policy.01 under Exchange Rule 5.3 (number of shareholders must be at least 2,000), that requirement would be deemed to be satisfied. Finally, if at least 40 million shares of a New Security will be outstanding in a restructuring, the Exchange may assume that the New Security will satisfy the listing criteria of both paragraphs (a)(1) (sufficient public float) and (a)(2) of Interpretation and Policy .01 under Exchange Rule 5.3. Before relying on either of the assumptions described above, the Exchange must make a reasonable investigation as to the number of shareholders and public float of the New Security and must not have determined that the requirements of paragraphs (a)(1) and (a)(2) will, in fact, not be satisfied.

The proposed rule change also would revise one of the Exchange's guidelines relating to the withdrawal of approval of underlying securities. Currently, under Exchange Rule 5.4, Interpretation and Policy .01(c) and .01(d), an underlying security will not be deemed to satisfy the Exchange's listing criteria if the trading volume of the underlying security in all markets was less than 1,800,000 shares in the preceding twelve months (the ''Maintenance Volume Test'') or if the market price of the underlying security closed below $5 on a majority of business days during the preceding six months (the ''Market Price Test''). Because New Securities have limited trading history, they may be unable to satisfy the Maintenance Volume Test or the Market Price Test at the time options on such securities are first listed for trading on the Exchange. Accordingly, the proposed rule change would add a new Interpretation and Policy .01(g) to Exchange Rule 5.4 to provide that the Exchange may determine whether a New Security satisfies the Maintenance Volume and Market Price Test set forth in paragraphs (c) and (d) of that Interpretation, as well as the comparable tests set forth in Interpretation and Policy .04 of Exchange Rule 5.4, by reference to the trading volume and price history of the Original Security prior to commencement of trading in the New Security, including ''when issued'' trading.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued by companies engaged in corporate restructuring transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

*B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–11 and should be submitted by March 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–3109 Filed 2–7–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–35324; International Series Release No. 781 File No. SR–CBOE–95–12]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Currency Warrants Based on the Value of the U.S. Dollar in Relation to the Mexican Peso

February 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 Exchange. 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 CBOE proposes to list and trade warrants based upon the value of the U.S. dollar in relation to the Mexican peso (''Mexican Peso Warrants''). the text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

**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 Exchange included statements concerning the purpose of the 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 CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange represents that it is permitted to list and trade currency warrants under CBOE Rule 31.5(E). The Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Mexican peso. The Exchange further represents that the listing and trading of Mexican Peso Warrants will comply in all respects with CBOE Rule 31.5(E), as discussed below.

Currency Warrant Trading

Mexican Peso Warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. Mexican Peso Warrants will be exercisable either throughout their life (*i.e.*, American-style) or only immediately prior to their expiration date (*i.e.*, European-style). Upon exercise, the holder of a Mexican Peso Warrant structured as a ''put'' will receive payment in U.S. dollars to the extent that the value of the Mexican peso has declined in relation to the U.S. dollar below a pre-stated base level. Conversely, upon exercise, holders of a Mexican Peso Warrant structured as a ''call'' will receive payment in U.S. dollars to the extent that the value of the Mexican peso has increased in relation to the U.S. dollar above a pre-stated level. Mexican Peso Warrants that are ''out-of-the-money'' at the time of expiration will expire worthless.

Warrant Listing Standards and Customer Safeguards

CBOE Rule 31.5(E) sets forth the criteria applicable to listing currency warrants. Any issue of Mexican Peso Warrants will conform to the listing guidelines under Rule 31.5(E) which provide that: (1) The issuer will have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be one million warrants, together with a minimum of 400 public holders, and have an aggregate market value of at least $4 million.

On September 28, 1994, the Exchange submitted for Commission approval, proposed rules governing customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants.[3] If the Commission approves these proposed rules, the Exchange represents that the listing and trading of the proposed Mexican Peso Warrants will be subject to these rules.

The CBOE will also require that Mexican Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 9.7. The Exchange also notes that the suitability standards of Exchange Rule 9.9 shall apply to recommendations in Mexican Peso Warrants. Further, the Exchange represents that the standards of Rule 9.10(a), regarding discretionary orders, will be applied to Mexican Peso Warrants. Additionally, the Exchange will require that customer positions in Mexican Peso Warrants be subject to the margin requirements applicable to foreign currency options.

Prior to the commencement of trading of Mexican Peso Warrants, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Index warrants. The Exchange will submit a draft of the circular to the Commission staff for approval prior to distribution to members.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market by providing investors with a low-cost means of participating in the performance of the Mexican economy or hedging against the risk of investing in that economy.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

[3] See Securities Exchange Act Release No. 35178 (December 29, 1994), 60 FR 2409 (January 9, 1994) (notice of File No. SR–CBOE–94–34).

[4] 15 U.S.C. 78f(b)(5) (1988).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer 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 Exchange consents, the Commission will:

(a) By order approve such 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, N.W., Washington, D.C. 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–12 and should be submitted by March 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[5] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–35304; International Series Release No. 779; File No. SR–CBOE–94–20]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Emerging Asian Markets Index and Long-Term Options on a Reduced-Value CBOE Emerging Asian Markets Index

January 31, 1995.

### I. Introduction

On June 30, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Emerging Asian Markets Index (''Asian Markets Index'' or ''Index''). The Exchange filed Amendment No. 1 to the proposed rule change on August 18, 1994.[3] Notice of the proposal, as amended, appeared in the **Federal Register** on August 26, 1994.[4] The Exchange subsequently filed Amendment No. 2 to the proposed rule change on January 26, 1995.[5] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

### II. Description of Proposal

*A. General*

The CBOE proposes to list for trading options on the Asian Markets Index, a new securities index developed by the CBOE. The Asian Markets Index is composed of the securities issued by 15 closed-end mutual funds [6] that are traded on the New York Stock Exchange (''NYSE'') and that invest in the stocks of firms in emerging Asian economies, excluding Japan.[7] The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Asian Markets Index (''Asian Markets LEAPS'' or ''Index LEAPS'').[8] Asian Markets LEAPS will trade independent of and in addition to regular Index options traded on the Exchange,[9] however, as discussed below, for purposes of position and exercise limits, positions in Index LEAPS and regular Index options will be aggregated.

*B. Composition of the Index*

The Index was designed by the Exchange and is based on the securities issued by 15 closed-end mutual funds that invest in the stocks of firms in emerging Asian economies, excluding Japan. The shares of each of the closed-end funds contained in the Index trade in the U.S. on the NYSE. The Index is price-weighted and will be calculated on a real-time basis using last sale prices of the shares of the closed-end funds comprising the Index.

As of the close of trading on January 4, 1995, the Index was valued at 122.35. Also as of that date the market capitalizations of the individual closed-end fund securities in the Index ranged from a high of $628.65 million to a low of $46.36 million, with the mean and median being $205.05 million and $172.65 million, respectively. The total market capitalization of the securities in the Index on that date was $3.08 billion. The price per share of the closed-end fund securities comprising the Index on January 4, 1995, ranged from a high of $28.13 to a low of $8.63, with an average price per share of $14.99.[10]

The average daily trading volume of the shares of the closed-end funds contained in the Index, for the period from July 1, 1994, through December 31, 1994, ranged from a high of 118,056 shares per day to a low of 9,984 shares per day. As of January 4, 1995, no single closed-end fund security contained in the Index accounted for more than 12.51% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 48.80% of the Index's value. The percentage weighting of the lowest weighted securities issued by a closed-end fund contained in the Index was 3.84% of the value of the Index and the percentage weighting of the five smallest closed-end fund securities contained in the Index accounted for 22.29% of the Index's value.[11] Based on the aggregate holdings of the mutual funds represented in the Index, as disclosed in the most recent semiannual reports of the component closed-end funds filed with the Commission prior to August 16, 1994, the CBOE represents that securities from no single country accounted for more than 16.25% (Hong Kong) nor less than 4.50% (China) of the weight of the Index. Based on the same semiannual reports, by aggregating the holdings of the closed-end funds comprising the Index, the CBOE represents that no single security held by one or more of the component mutual funds accounted for more than 1.25% of the weight of the Index.[12] Finally, more than 10 emerging Asian countries are represented through the holdings of the component funds comprising the Index.[13]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] In Amendment No. 1, the Exchange proposed to treat the Asian Markets Index as a narrow-based index for purposes of margin, position limits, the exercise limits. Pursuant to CBOE Rule 24.4A, the position limits for the Index will initially be set at 10,500 contracts. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated August 18, 1994.

[4] *See* Securities Exchange Act Release No. 34553 (August 19, 1994), 59 FR 44205 (August 26, 1994).

[5] In Amendment No. 2, the Exchange proposed: (1) to reduce the number of components in the Index from 16 to 15; and (2) several amendments, as discussed more fully herein, regarding the maintenance criteria for the Index. *See* Letter from Joseph Levin, Vice President, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated January 16, 1995 (''Amendment No. 2'').

[6] *Id.*

[7] The components of the Index are the: Asia Pacific Fund; Asia Tigers Fund Inc.; China Fund Inc.; Greater China Fund Inc.; Jardine Fleming China Region Fund Inc.; Morgan Stanley India Fund; Jakarta Growth Fund Inc.; Korea Fund Inc.; Korea Equity Fund Inc.; Malaysia Fund Inc.; First Philippine Fund Inc.; Singapore Fund Inc.; ROC Taiwan Fund; Taiwan Fund Inc.; and Thai Fund Inc.

[8] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. *See* CBOE Rule 24.9(b)(1). The Commission notes that the Exchange has submitted a proposed rule change to allow the CBOE to list index LEAPS that expire up to 60 months from their date of issuance and to allow up to 10 expiration months to be outstanding at any one time. *See* Securities Exchange Act Release No. 35278 (January 25, 1995).

[9] According to the CBOE, the Asian Markets Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and as such, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from emerging Asian market securities. The CBOE believes the Index will provide retail and institutional investors with a means of benefitting from their forecasts of the performance of emerging Asian market securities. The Exchange further believes that options on the Index also can be utilized by portfolio managers and investors as a means of hedging the risks of investing in emerging Asian market securities either directly or through mutual funds that invest primarily in Asian market securities.

[10] *See* Amendment No. 2, *supra* note 5.

[11] *Id.*

[12] For example, four of the 15 component funds held shares of China Light & Power based on these semiannual reports. By aggregating the positions of these four mutual funds, China Light & Power accounted for 0.73% of weight of the Index. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS Division, Commission, dated August 16, 1994 (''August 16 Letter'').

[13] *Id.*

*C. Maintenance*

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed below, to reflect the conditions in the emerging Asian securities markets, excluding Japan. If it becomes necessary to replace the securities issued by a closed-end fund contained in the Index, the Exchange represents that every effort will be made to add only replacement securities issued by closed-end mutual funds that preserve the character of the Index and that are listed on either the American Stock Exchange (''Amex'') or the NYSE, or that are Nasdaq National Market (''Nasdaq/NM'') securities.[14] In considering securities of closed-end mutual funds to be added to the Index, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the particular closed-end funds and the securities issued by those mutual funds. Further, a closed-end fund represented in the Index may be replaced in the event of certain events, such ass a change in the investment objectives of the mutual fund. The Exchange will most likely maintain securities representing 15 closed-end funds in the Index.[15] In addition, in choosing securities issued by closed-end funds as replacements for or additions to the Index, the CBOE will not make a composition change that would result in less than 75% of the weight of the Index or 75% of the number of closed-end funds represented in the Index satisfying the listing criteria for standardized options trading set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for mutual fund securities that are not then the subject of standardized options trading)[16] and CBOE Rule 5.4, Interpretation and Policy .01 (for mutual fund securities that are then the subject of standardized options trading).[17] Additionally, at least twice each year the CBOE will review the Index to ensure that not less than 75% of the weight of the Index and 75% of the number of closed-end funds represented in the Index continue to satisfy the criteria for standardized options trading set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for mutual fund securities that are not then the subject of standardized options trading) and CBOE Rule 5.4, Interpretation and Policy .01 (for mutual fund securities that are then the subject of standardized options trading).

Moreover, at least twice each year, based on the most recent Commission filings by the closed-end funds represented in the Index, the CBOE will review the holdings of each of the closed-end funds and will promptly notify the Commission if it becomes aware that: (1) any security held by one or more mutual funds represented in the Index, in aggregate, accounts for more than 5% of the weight of the Index; or (2) securities from any one country held by one or more mutual funds represented in the Index, in aggregate, account for more than 25% of the weight of the Index.

Finally, the CBOE will promptly notify the Commission staff at any time that the CBOE determines that the securities of a closed-end fund contained in the Index account for more than 15% of the weight of the Index if: (1) the shares of the mutual fund do not satisfy the listing eligibility requirements in CBOE Rule 5.3, Interpretation and Policy .01 (if the mutual fund does not then have standardized options trading on its shares); or (2) the shares of the mutual fund do not satisfy the maintenance eligibility requirements in CBOE Rule 5.4, Interpretation and Policy .01 (if the mutual fund has standardized options trading on its shares).[18]

The CBOE will promptly notify the Commission staff at any time that the CBOE determines that either the Index or the securities issued by the closed-end funds comprising the Index fail to satisfy any of the above maintenance criteria. Further, in such an event, the Exchange will not open for trading any additional series of Index options or Index LEAPS unless the Exchange determines that such failure is not significant, and the Commission staff affirmatively concurs in that determination, or unless the Commission specifically approves the continued listing of that class of Index options or Index LEAPS pursuant to a proposal filed in accordance with Section 19(b)(2) of the Act.[19]

*D. Applicability of CBOE Rules Regarding Index Options*

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Index options and full-value and reduced-value Index LEAPS. In accordance with Chapter XXIV of CBOE's rules, the Index will be treated as a narrow-based index for purposes of applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment.[20]

*E. Calculation of the Index*

The CBOE Emerging Asian Markets Index is a price-weighted index and reflects changes in the prices of the closed-end mutual fund securities comprising the Index relative to the Index's base date of December 31, 1991. Specifically, the Index value is calculated by adding the prices of the mutual fund securities comprising the Index and then dividing this summation by a divisor that is equal to the number of the closed-end funds represented in the Index in order to obtain an average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the closed-end fund securities comprising the Index as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, certain rights issuances.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority (''OPRA'') every fifteen seconds by the CBOE, based on the last-sale prices of the closed-end fund securities comprising the Index.[21] OPRA, in turn, will disseminate the

[14] Additionally, the CBOE will be required to ensure that each closed-end fund security comprising the Index is a ''reported security'' as defined in Rule 11Aa3–1 of the Act. *See* Amendment No. 2, *supra* note 5.

[15] If the CBOE determines to increase the number of components to greater than 20 or to decrease the number of components to less than 10, the Exchange will be required to submit a rule filing pursuant to Section 19(b) of the Act. *Id.*

[16] *Id.* The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE rule 5.3, Interpretation and Policy .01.

[17] *See* Amendment No. 2, *supra* note 5. The CBOE's options maintenance standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 6,300,000 shares; (2) there must be a minimum of 1,600 stockholders; (3) trading volume in the U.S. must have been at least 1.8 million over the preceding twelve months; and (4) the U.S. market price must have been at least $5.00 for a majority of the business days during the preceding six calendar months. *See* CBOE Rule 5.3, Interpretation and Policy .01.

[18] *See* Amendment No. 2, *supra* note 5.

[19] *Id.*

[20] *See infra* Section II.H.

[21] For purposes of dissemination of the Index value, if the shares of a mutual fund included in the Index have not opened for trading, the CBOE will use the closing value of those shares on the prior trading day when calculating the value of the Index, until the shares of the mutual fund open for trading.

Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and full-value and reduced-value Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the closed-end fund securities comprising the Index in their primary market on the last trading day prior to expiration.[22] In the event that a closed-end fund security traded as a Nasdaq/NM security is added to the Index, the first reported sale prices for those shares will be used for determining a settlement value. Once the shares of all of the mutual funds represented in the Index have opened for trading, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts, including full-value and reduced-value Index LEAPS. If any of the closed-end fund securities contained in the Index do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.,* nornally Thursday's) last sale price will be used in the Index value calculation. In this regard, before deciding to use Thursday's closing value for a closed-end fund security contained in the Index for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on Expiration Friday (as defined herein).

*F. Contract Specifications*

The proposed options on the Index will be cash-settled, European-style options.[23] Standard options trading hours (8:30 a.m. to 3:15 p.m.[24] Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[25] In addition, pursuant to CBOE rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from 12 to 36 months from the date of issuance.[26]

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). Accordingly, because options on the Index will settle based upon opening prices of the closed-end fund securities comprising the Index on the last trading day before expiration (normally Expiration Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

*G. Listing of Long-Term Options on the Full-Value or Reduced-Value Asian Markets Index*

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 36 months from listing based on the full-value Index or a reduced-value Index that will be computed at one-tenth of the full-value Asian Markets Index.[27] Existing Exchange requirements applicable to full-value Index options will apply to full-value and reduced-value Index LEAPS.[28] The current and closing Index value for reduced-value Asian Markets LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 122.36 would be 12.24 for the reduced-value Index LEAPS and an Index value of 122.34 would be 12.23 for the reduced-value Index LEAPS. The reduced-value Index LEAPS will also be European-style and will be subject to the same rules that govern the trading of Index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

*H. Position and Exercise Limits, Margin Requirements, and Trading Halts*

Exchange rules governing margin requirements,[29] position and exercise limits,[30] and trading halt procedures[31] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether given positions in full-value and reduced-value Index LEAPS comply with applicable position and exercise limits, positions in full-value and reduced-value Index LEAPS will be aggregated with positions in the regular Index options. For these purposes, ten reduced-value contracts will equal one full-value contract.

*I. Surveillance*

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the shares of the mutual funds comprising the Index. Further, the Intermarket Surveillance Group Agreement will be applicable to the trading of options on the Index.[32]

## III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange and, in particular, the

[22] As noted above, the current primary market for each of the closed-end fund securities comprising the Index is the NYSE.

[23] A European-style option can be exercised only during a specified period before the option expires.

[24] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on January 27, 1995.

[25] For a description of the strike price intervals for reduced-value Index options and long-term Index options, *See infra,* Section II.G.

[26] *See supra* note 8.

[27] *Id.*

[28] *See* CBOE Rule 24.9(b).

[29] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[30] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to such rules, that a lower limit is warranted.

[31] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options and Index LEAPS may be halted or suspended whenever trading in underlying mutual fund shares whose weighted value represents more than 20% of the Index value are halted or suspended.

[32] The Intermarket Surveillance Group (''ISG'') was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE, the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. (''NASD''); the NYSE, the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.,* the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

requirements of Section 6(b)(5).[33] Specifically, the Commission finds that the trading of Asian Markets Index options, including full-value and reduced-value Index LEAPs, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with emerging Asian market securities.[34]

The trading of options on the Asian Markets Index, including full-value and reduced-value Index LEAPS, however, raises several issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has adequately addressed these issues.

*A. Index Design and Structure*

The Commission finds that it is appropriate to treat the Asian Markets Index as a narrow-based index under CBOE rules for purposes of applicable position and exercise limits, trading halt and suspension procedures, and margin treatment. Although the closed-end funds represented in the Index, in aggregate, hold in excess of 180 individual Asian market securities,[35] the Asian Markets Index is composed of securities representing only 15 closed-end mutual funds.[36] Accordingly, in light of the limited number of closed-end fund securities contained in the Index, the Commission believes it is proper to treat the Asian Markets Index as narrow-based for the regulatory purposes noted above.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the closed-end fund securities comprising the Index significantly minimizes the potential for manipulation of the Index. First, the overwhelming majority of the closed-end fund securities comprising the Index are actively traded, with an average daily trading volume for all such mutual fund shares for the period from July 1, 1994 through December 31, 1994, of approximately 53,568 shares per day. Second, the market capitalizations of the closed-end fund securities in the Index are large, ranging from a high of $628.65 million to a low of $46.36 million as of January 4, 1995, with the mean and median being $205.05 million and $172.65 million, respectively. Third, although the Index is composed of securities representing only 15 closed-end mutual funds, no particular security or group of closed-end fund securities dominates the Index. Specifically, as of January 4, 1995, no closed-end fund security contained in the Index accounted for more than 12.51% of the Index's total value and the percentage weighting of the five largest closed-end fund securities in the Index accounted for 48.80% of the Index's value.

Fourth, the proposed maintenance criteria will serve to ensure that: (1) the Index remains comprised substantially of closed-end mutual funds that are highly capitalized and that have liquid markets for their issued securities; and (2) the Index is not dominated by any one mutual fund security that does not satisfy the Exchange's options listing criteria, any one security held by one or more of the mutual funds represented in the Index, or securities from any one country held by one or more of the mutual funds represented in the Index. Specifically, in considering changes to the composition of the Index, 75% of the weight of the Index and 75% of the number of closed-end mutual funds represented in the Index must comply with the listing criteria for standardized options trading set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for mutual fund securities that are not then the subject of standardized options trading) and CBOE Rule 5.4, Interpretation and Policy .01 (for mutual fund securities that are then the subject of standardized options trading).[37] Additionally, the CBOE is required to review the composition of the Index at least semiannually to ensure that the Index continues to meet these ''75%'' requirements.

Further, at least semiannually, based on the most recent Commission filings by the closed-end funds represented in the Index, the CBOE will review the holdings of each closed-end fund and will promptly notify the Commission if: (1) any security held by one or more of the closed-end funds represented in the Index, in aggregate, accounts for more than 5% of the weight of the Index; or (2) securities from any one country held by one or more of the closed-end funds represented in the Index, in aggregate, account for more than 25% of the weight of the Index. Similarly, the CBOE will promptly notify the Commission staff at any time that it determines that the shares of a closed-end fund contained in the Index account for more than 15% of the weight of the Index if the shares of the mutual fund do not satisfy the listing eligibility requirements in CBOE's rules.[38]

Finally, the CBOE will promptly notify the Commission staff at any time that it determines that either the Index or the shares of one or more of the closed-end funds comprising the Index fail to satisfy any of the above maintenance criteria. In such an event, the Exchange will not open for trading any additional series of Index options or LEAPS unless the Exchange determines that such failure is not significant, and the Commission staff affirmatively concurs in that determination, or unless the Commission specifically approves the continued listing of that class of Index options or Index LEAPS pursuant to a proposal filed in accordance with Section 19(b)(2) of the Act.

For the above reasons, the Commission believes that these criteria minimize the potential for manipulation of the Index and eliminate domination concerns.

*B. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Asian Markets Index options, including full-value and reduced-value Asian Markets LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the

[33] 15 U.S.C. 78f(b)(5)(1988).

[34] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and full-value and reduced-value Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of Asian market securities, excluding Japanese securities, represented through the holdings of closed-end mutual funds traded in the U.S.

[35] *See* August 16, Letter, *supra* note 12.

[36] The reduced-value Asian Markets Index, which consists of the same component mutual fund components as the Index and is calculated by dividing the Index value by ten, is identical to the Asian Markets Index.

[37] Additionally, mutual fund securities contained in the Index must be ''reported'' securities and must be traded on the Amex or the NYSE or must be Nasdaq/NM securities. The CBOE is also limited in the number of mutual funds that can be represented in the Index without having to obtain Commission approval. *See supra* notes 14 and 15.

[38] *See supra* notes 16 and 17.

Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized index options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Asian Markets Index options and full-value and reduced-value Asian Markets Index LEAPS.

*C. Surveillance*

The Commission notes that predominantly because of the lack of relevant market information sharing agreements, the shares of only one of the closed-end funds contained in the Index (Asia Pacific Fund) are eligible for standardized options trading.[39] The Commission believes, however, that based on the maintenance criteria discussed above, the CBOE has addressed the concerns that the Commission expressed in approving the listing of options on individual country funds.[40] These maintenance criteria, among other things, ensure that the Index will not become a surrogate for trading options on either the closed-end mutual funds represented in the Index or individual Asian market securities held by those component mutual funds for which standardized options could not otherwise be traded and minimize the potential for manipulation of the value of the Index.[41]

Second, in approving the listing of options on individual country funds, the Commission determined that if a fund is ''diversified,'' as defined in the Investment Advisers Act of 1940 (''Advisers Act''),[42] and holds securities from five or more countries, a surveillance sharing agreement is not required between the Exchange and the primary foreign markets for the securities held by the closed-end fund. In that case, it was determined that the portfolio of such a closed-end fund would be significantly diverse so as to reduce the likelihood that the price of the securities issued by the closed-end fund could be manipulated. Even though the shares of only one of the closed-end funds contained in the Index is classified as ''diversified,'' the Commission believes that by combining the securities of these mutual funds together in the Index, the Index, as a whole, replicates essentially a ''diversified'' fund. Specifically, the Index consists of securities representing 15 closed-end mutual funds with those mutual funds holding positions, in aggregate, in more than 180 different stocks from more than 10 emerging Asian markets.[43] The Commission believes, therefore, that the Index as a whole achieves the diversity of holds that the Commission found to be sufficient in the Country Fund Approval Order to minimize the Commission's concerns about potential manipulation. As a result, for the reasons stated herein and in the Country Fund Approval Order,[44] the Commission believes that the lack of market surveillance sharing agreements does not raise substantial regulatory concerns.

Third, because the Index is composed solely of the securities issued by closed-end mutual funds, the Commission's concerns regarding potential manipulation of the Index are further reduced. As discussed in the Country Fund Approval Order, in contrast to other foreign securities products, international closed-end mutual funds hold portfolios of securities chosen by portfolio managers.[45] Although the composition of the portfolio of each mutual fund represented in the Index is published on a semiannual basis, the securities held by each mutual fund represented in the Index can be changed at any time at the discretion of the portfolio managers, as long as their investment decisions are consistent with the stated investment objectives and policies of the particular closed-end fund. For these reasons, the Commission believes that it generally would be difficult for someone to use options on the Index to attempt a manipulation of the market for any particular security issued by a closed-end fund represented in the Index or to attempt a manipulation of the Index through a manipulation of the shares of the mutual funds comprising the Index.

The Commission notes that generally the only people who could attempt such a manipulation would be people who have access to ''inside'' information about the composition of the portfolio of a closed-end fund and the trading activities of the mutual fund's portfolio manager. The Advisers Act, and the rules promulgated thereunder, contain provisions designed to detect and deter certain advisory employees and affiliates from trading in any securities based on ''inside'' information about the investment decisions of a closed-end fund. Rule 204–2(a)(12) under the Advisers Act requires an investment adviser to make and keep accurate records of every transaction in a security in which the investment adviser or any advisory representative has a beneficial interest. Accordingly, the Commission believes that the Advisers Act gives it the authority to review the trading activities of anyone who is likely to have access to the information necessary to use options on the Index to attempt a manipulation of the relevant markets.

Finally, even though the CBOE does not in this case have market information sharing agreements with each of the relevant foreign markets, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information regarding the trading of the mutual fund securities comprising the Index.[46] The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value Index LEAPS less readily susceptible to manipulation.[47]

*D. Market Impact*

The Commission believes that the listing and trading on the CBOE of Asian Markets Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the markets for the securities issued by the closed-end funds represented in the Index.[48] First, as described above, the securities of no one closed-end fund or group of closed-end funds represented in the Index dominates the weight of the Index. Second, the maintenance criteria for the Index ensure that: (1) the Index will be substantially comprised of closed-end fund securities that satisfy

[39] Options on the securities issued by international funds are eligible for standardized options trading where those securities meet or exceed the Exchange's established uniform options listing standards (*see supra* note 16) and (1) the Exchange has a market information sharing agreement with the primary home exchange on which each of the foreign securities comprising the fund's portfolio trade, (2) the fund is classified as a diversified fund, as that term is defined by Section 5(b) of the Investment Company Act, 15 U.S.C. § 80a–5(b), and the fund's portfolio is composed of securities from five or more countries, or (3) the listing of a particular international fund option is specifically approved by the Commission. *See* Securities Exchange Act Release No. 33068 (October 19, 1993), 58 FR 55093 (October 25, 1993) (''Country Fund Approval Order'').

[40] *Id.*

[41] *See supra* Section III.A.

[42] 15 U.S.C. 80b–1 *et. seq.* (1988).

[43] *See* August 15 Letter, *supra* note 12.

[44] *See* Country Fund Approval Order, *supra* note 39.

[45] *Id.*

[46] *See supra* note 32.

[47] *See, e.g.,* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing of Index options and Index LEAPS on the CBOE Biotech Index).

[48] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of Index options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Scott Lyden, CBOE, dated June 27, 1994.

the Exchange's listing standards for standardized options trading; and (2) no individual security held by one or more of the mutual funds represented in the Index and no individual country represented by those holdings will dominate the Index.[49] Third, because the securities issued by each of the closed-end funds comprising the Index must be ''reported securities'' as defined in Rule 11Aa3–1 of the Act, the securities issued by these closed-end funds generally will be actively-traded, highly-capitalized securities. Fourth, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Asian Markets Index options, including full-value and reduced-value Index LEAPS, based on the opening prices of the closed-end fund securities comprising the Index is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for the closed-end fund securities underlying options on the Index.[50]

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides objective maintenance criteria which, for the reasons stated above, should minimize the potential for manipulation of the Index and the closed-end mutual fund securities comprising the Index. Further, as discussed above, the Commission believes that these maintenance criteria significantly strengthen the customer protection and surveillance aspects of the proposal, as originally proposed.[51] Moreover, the Commission believes that reducing the number of component funds in the Index by one is not a material change that raises regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–94–20 and should be submitted by March 1, 1995.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–CBOE–94–20), as amended, is approved.[53]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–3035 Filed 2–7–95; 8:45 am]

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[49] *See supra* Section III.A.

[50] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[51] *See supra* Section III.A.

[52] 15 U.S.C 78s(b)(2) (1988).

[53] The Commission notes that prior to listing Index options or Index LEAPS, the CBOE will be required to review the then most recent semiannual reports filed with the Commission by each of the closed-end funds represented in the Index to ensure that the closed-end fund securities comprising the Index, as well as the holdings of each of the closed-end funds represented in the Index, satisfy, at the time of listing, the listing criteria discussed above.

[54] 17 CFR 200.30–3(a)(12) (1994).

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**[Release No. 34–35307; File No. SR–CBOE–95–03]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Restrictions on the Exercise on Index Options

January 31, 1995.

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 January 18, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 Exchange. 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 Exchange proposes to amend its Rule 4.16 to limit the time period during which restrictions on the exercise of index options may be in effect, making Rule 4.16 consistent with CBOE Regulatory Circular RG91–11, dated January 14, 1991. Rule 4.16 would be amended to substitute the words ''business day'' for the words ''trading day,'' thereby making Rule 4.16 consistent with CBOE's stated policy as set forth in Regulatory Circular RG91–11. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

### 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 CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to revise Rule 4.16 to make it consistent with CBOE's stated policy regarding when restrictions on the exercise of index options may be in effect, as set forth in Regulatory Circular RG91–11. The Exchange represents that it promulgated the policies regarding exercise restrictions in Regulatory Circular RG91–11 to implement a coordinated approach to which all of the options exchanges had agreed. Regulatory Circular RG91–11 provides, in part, that, except during ''the last business day prior to expiration, the (American Stock Exchange, CBOE, New York Stock Exchange, Pacific Stock Exchange, and the Philadelphia Stock Exchange) intend to prohibit exercises of cash settled index options during any time when trading in such options are

delayed, halted or suspended.'' (Emphasis in original). The Exchange represents that by purporting to restrict exercises of these index options except on the last business day prior to expiration, RG91–11 conflicts with Rule 4.16, which provides that exercise restrictions on index options are only allowed until ''the opening of business on the last trading day before the expiration date.'' (Emphasis added).

The Exchange believes that this terminology creates a problem in the case of A.M.-settled index options. The ''last business day prior to expiration'' is, for both A.M.-settled and P.M.-settled index options, the Friday before expiration. For P.M.-settled options, that Friday is also the ''last trading day before the expiration date.'' Pursuant to CBOE Rule 24.9(a)(4), however, the ''last trading day'' before the expiration date of A.M.-settled index options is ''the business day preceding the last day of trading in the underlying securities prior to expiration''—i.e., Thursday before expiration. (Emphasis added). The present form of Rule 4.16 therefore would prohibit restrictions on the exercise of A.M.-settled index options on expiration Thursday, as well as expiration Friday, even when trading in such options ''had been delayed, halted or suspended.'' This, the Exchange believes, is contrary to the policy articulated in Regulatory Circular RG–11, which would only prohibit restrictions on exercise of any index option on expiration Friday.

To eliminate this inconsistency, and to implement the policy of Regulatory Circular RG91–11 that index option exercise restrictions may be in effect until the opening of business on expiration Friday (i.e., the ''last business day'' before expiration), the proposed rule change would amend Rule 4.16 to substitute the words ''business day'' for the words ''trading day.''

The CBOE represents that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) [1] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose and burden on competition.

[1] 15 U.S.C. 78f(b)(5) (1988).

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it is has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No.SR–CBOE–95–03 and should be submitted by March 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

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[2] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–35303; International Series Release No. 778; File No. SR–CBOE–94–19]**

# Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Emerging Markets Index and Long-Term Options on a Reduced-Value CBOE Emerging Markets Index

January 31, 1995.

## I. Introduction

On June 30, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Emerging Markets Index (''Emerging Markets Index'' or ''Index''). The Exchange filed Amendment No. 1 to the proposed rule change on August 18, 1994.[3] Notice of the proposal, as amended, appeared in the **Federal Register** on August 26, 1994.[4] The Exchange subsequently filed Amendment No. 2 to the proposed rule change on January 26, 1995.[5] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

## II. Description of Proposal

*A. General*

The CBOE proposes to list for trading options on the Emerging Markets Index, a new securities index developed by the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 24.19b–4 (1992).

[3] In Amendment No. 1, the Exchange proposed to treat the Asian Markets Index as a narrow-based index for purposes of margin, position limits, and exercise limits. Pursuant to CBOE Rule 24.4A, the position limits for the Index will initially be set at 10,500 contracts. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated August 18, 1994.

[4] See Securities Exchange Act Release No. 34552 (August 19, 1994), 59 FR 44203 (August 26, 1994).

[5] In Amendment No. 2, the Exchange proposed: (1) to reduce the number of components in the Index from 25 to 23; and (2) several amendments, as discussed more fully herein, regarding the maintenance criteria for the Index. See Letter from Joseph Levin, Vice President, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated January 26, 1995 (''Amendment No. 2'').

CBOE. The Emerging Markets Index is composed of the securities issued by 23 closed-end mutual funds[6] that are traded on the New York Stock Exchange (''NYSE'') and that invest in the stocks of firms in emerging Asian (excluding Japan) and Latin American economies.[7] The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Emerging Markets Index (''Emerging Markets LEAPS'' or ''Index LEAPS'').[8] Emerging Markets LEAPS will trade independent of and in addition to regular Index options traded on the Exchange,[9] however, as discussed below, for purposes of position and exercise limits, positions in Index LEAPS and regular Index options will be aggregated.

*B. Composition of the Index*

The Index was designed by the Exchange and is based on the securities issued by 23 closed-end mutual funds that invest in the stocks of firms in emerging Asian (excluding Japan) and Latin American economies. The shares of each of the closed-end funds contained in the Index trade in the U.S. on the NYSE. The Index is price-weighted and will be calculated on a real-time basis using last sale prices of the shares of the closed-end funds comprising the Index.

As of the close of trading on January 4, 1995, the Index was valued at 125.49. Also as of that date the market capitalizations of the individual closed-end fund securities in the Index ranged from a high of $824.31 million to a low of $46.36 million, with the mean and median being $224 million and $155 million, respectively. The total market capitalization of the securities in the Index on that date was $5.2 billion. The price per share of the closed-end fund securities comprising the Index on January 4, 1995, ranged from a high of $45.88 to a low of $8.63, with an average price per share of $17.35.[10]

The average daily trading volume of the shares of the closed-end funds contained in the Index, for the period from July 1, 1994, through December 31, 1994, ranged from a high of 284,048 shares per day to a low of 9,984 shares per day. As of January 4, 1995, no single closed-end fund security contained in the Index accounted for more than 11.50% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 37.56% of the Index's value. The percentage weighting of the lowest weighted securities issued by a closed-end fund contained in the Index was 2.16% of the value of the Index and the percentage weighting of the five smallest closed-end fund securities contained in the Index accounted for 12.53% of the Index's value.[11] Based on the aggregate holdings of the mutual funds represented in the Index, as disclosed in the most recent semiannual reports of the component closed-end funds filed with the Commission prior to August 16, 1994, the CBOE represents that securities from no single country accounted for more than 15.18% (Mexico) nor less than 2.47% (China) of the weight of the Index. Based on the same semiannual reports, by aggregating the holdings of the closed-end funds comprising the Index, the CBOE represents that no single security held by one or more of the component mutual funds accounted for more than 1.57% of the weight of the Index.[12] Finally, more than 14 emerging Asian and Latin American countries are represented through the holdings of the component funds comprising the Index.[13]

*C. Maintenance*

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed below, to reflect the conditions in the emerging Asian (excluding Japan) and Latin American securities markets. If it becomes necessary to replace the securities issues by a closed-end fund contained in the Index, the Exchange represents that every effort will be made to add only replacement securities issued by closed-end mutual funds that preserve the character of the Index and that are listed on either the American Stock Exchange (''Amex'') or the NYSE, or that are Nasdaq National Market (''Nasdaq/NM'') securities.[14] In considering securities of closed-end mutual funds to be added to the Index, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the particular closed-end funds and the securities issued by those mutual funds. Further, a closed-end fund represented in the Index may be replaced in the event of certain events, such as a change in the investment objectives of the mutual fund. The Exchange will most likely maintain securities representing 23 closed-end funds in the Index.[15] In addition, in choosing securities issued by closed-end funds as replacements for or additions to the Index, the CBOE will not make a composition change that would result in less than 75% of the weight of the Index or 75% of the number of closed-end funds represented in the Index satisfying the listing criteria for standardized options trading set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for mutual fund securities that are not then the subject of standardized options trading)[16] and

[6] *Id.*

[7] The components of the Index are: the Latin America Discovery Fund; Argentina Fund; Brazilian Equity Fund; Brazil Fund; Chile Fund; Emerging Mexico Fund; Mexico Equity and Income Fund; Mexico Fund; Asia Pacific Fund; Asia Tigers Fund Inc.; China Fund Inc.; Greater China Fund Inc.; Jardine Fleming China Region Fund Inc.; Morgan Stanley India Fund; Jakarta Growth Fund Inc.; Korea Fund Inc.; Korea Equity Fund Inc.; Malaysia Fund Inc.; First Philippine Fund Inc.; Singapore Fund Inc.; ROC Taiwan Fund; Taiwan Fund Inc.; and Thai Fund Inc.

[8] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. See CBOE Rule 24.9(b)(1). The Commission notes that the Exchange has submitted a proposed rule change to allow the CBOE to list Index LEAPS that expire up to 60 months from their date of issuance and to allow up to 10 expiration months to be outstanding at any one time. See Securities Exchange Act Release No. 35278 (January 25, 1995).

[9] According to the CBOE, the Emerging Markets Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and as such, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from emerging Asian and Latin American market securities. The CBOE believes the Index will provide retail and institutional investors with a means of benefiting from their forecasts of the performance of emerging Asian and Latin American market securities. The Exchange further believes that options on the Index also can be utilized by portfolio managers and investors as a means of hedging the risks of investing in emerging Asian and Latin American market securities either directly or through mutual funds that invest primarily in Asian and Latin American market securities.

[10] See Amendment No. 2, *supra* note 5.

[11] *Id.*

[12] For example, three of the 23 component funds held shares of Coteminas based on these semiannual reports. By aggregating the positions of these three mutual funds, Coteminas accounted for 0.25% of the weight of the Index. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated August 16, 1994 (''August 16 Letter'').

[13] *Id.*

[14] Additionally, the CBOE will be required to ensure that each closed-end fund security comprising the Index is a ''reported security'' as defined in Rule 11Aa3–1 of the Act. See Amendment No. 2, *supra* note 5.

[15] If the CBOE determines to increase the number of components to greater than 30 or to decrease the number of components to less than 16, the Exchange will be required to submit a rule filing pursuant to Section 19(b) of the Act. *Id.*

[16] *Id.* The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements; (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the

CBOE Rule 5.4, Interpretation and Policy .01 (for mutual fund securities that are then the subject of standardized options trading).[17] Additionally, at least twice each year the CBOE will review the Index to ensure that not less than 75% of the weight of the Index and 75% of the number of closed-end funds represented in the Index continue to satisfy the criteria for standardized options trading set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for mutual fund securities that are not then the subject of standardized options trading) and CBOE Rule 5.4, Interpretation and Policy .01 (for mutual fund securities that are then the subject of standardized options trading).

Moreover, at least twice each year, based on the most recent Commission filings by the closed-end funds represented in the Index, the CBOE will review the holdings of each of the closed-end funds and will promptly notify the Commission if it becomes aware that: (1) Any security held by one or more mutual funds represented in the Index, in aggregate, accounts for more than 5% of the weight of the Index; or (2) securities from any one country held by one or more mutual funds represented in the Index, in aggregate, account for more than 25% of the weight of the Index.

Finally, the CBOE will promptly notify the Commission staff at any time that the CBOE determines that the securities of a closed-end fund contained in the Index account for more than 15% of the weight of the Index if: (1) The shares of the mutual fund do not satisfy the listing eligibility requirements in CBOE Rule 5.3, Interpretation and Policy .01 (if the mutual fund does not then have standardized options trading on its shares); or (2) the shares of the mutual fund do not satisfy the maintenance eligibility requirements in CBOE Rule 5.4, Interpretation and Policy .01 (if the mutual fund has standardized options trading on its shares).[18]

The CBOE will promptly notify the Commission staff at any time that the CBOE determines that either the Index or the securities issued by the closed-end funds comprising the Index fail to satisfy any of the above maintenance criteria. Further, in such an event, the Exchange will not open for trading any additional series of Index options or Index LEAPS unless the Exchange determines that such failure is not significant, and the Commission staff affirmative concurs in that determination, or unless the Commission specifically approves the continued listing of that class of Index options or Index LEAPS pursuant to a proposal filed in accordance with Section 19(b)(2) of the Act.[19]

*D. Applicability of CBOE Rules Regarding Index Options*

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Index options and full-value and reduced-value Index LEAPS. In accordance with Chapter XXIV of CBOE's rules, the Index will be treated as a narrow-based index for purposes of applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment.[20]

*E. Calculation of the Index*

The CBOE Emerging Markets Index is a price-weighted index and reflects changes in the prices of the closed-end mutual fund securities comprising the Index relative to the Index's base date of December 31, 1991. Specifically, the Index value is calculated by adding the prices of the mutual fund securities comprising the Index and then dividing this summation by a divisor that is equal to the number of the closed-end funds represented in the Index in order to obtain an average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the closed-end fund securities comprising the Index as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, certain rights issuances.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority (''OPRA'') every fifteen seconds by the CBOE, based on the last-sale prices of the closed-end fund securities comprising the Index.[21] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and full-value and reduced-value Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the closed-end fund securities comprising the Index in their primary market on the last trading day prior to expiration.[22] In the event that a closed-end fund security traded as a Nasdaq/NM security is added to the Index, the first reported sale price for those shares will be used for determining a settlement value. Once the shares of all of the mutual funds represented in the Index have opened for trading, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts, including full-value and reduced-value Index LEAPS. If any of the closed-end fund securities contained in the Index do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index value calculation. In this regard, before deciding to use Thursday's closing value for a closed-end fund security contained in the Index for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on Expiration Friday (as defined herein).

*F. Contract Specifications*

The proposed options on the Index will be cash-settled, European-style options.[23] Standard options trading hours (8:30 a.m. to 3:15 p.m.[24] Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[25] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any

preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See CBOE Rule 5.3, Interpretation and Policy .01.

[17] *See* Amendment No. 2, *supra* note 5. The CBOE's options maintenance standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 6,300,000 shares; (2) there must be a minimum of 1,600 stockholders; (3) trading volume in the U.S. must have been at least 1.8 million over the preceding twelve months; and (4) the U.S. market price must have been at least $5.00 for a majority of the business days during the preceding six calendar months. See CBOE Rule 5.3, Interpretation and Policy .01.

[18] See Amendment No. 2, *supra* note 5.

[19] *Id.*

[20] See *infra* Section II.H.

[21] For purposes of dissemination of the Index value, if the shares of a mutual fund included in the Index have not opened for trading, the CBOE will use the closing value of those shares on the prior trading day when calculating the value of the Index, until the shares of the mutual fund open for trading.

[22] As noted above, the current primary market for each of the closed-end fund securities comprising the Index is the NYSE.

[23] A European-style option can be exercised only during a specified period before the option expires.

[24] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on January 27, 1995.

[25] For a description of the strike price intervals for reduced-value Index options and long-term Index options, see *infra*, Section II.G.

given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from 12 to 36 months from the date of issuance.[26]

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). Accordingly, because options on the Index will settle based upon opening prices of the closed-end fund securities comprising the Index on the last trading day before expiration (normally Expiration Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

*G. Listing of Long-Term Options on the Full-Value or Reduced-Value Emerging Markets Index*

The proposal proves that the Exchange may list long-term Index options that expire from 12 to 36 months from listing based on the full-value Index or a reduced-value Index that will be computed at one-tenth of the full-value Emerging Markets Index.[27] Existing Exchange requirements applicable to full-value Index options will apply to full-value and reduced-value Index LEAPS.[28] The current and closing Index value for reduced-value Emerging Markets LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 125.46 would be 12.55 for the reduced-value Index LEAPS and an Index value of 125.44 would be 12.54 for the reduced-value Index LEAPS. The reduced-value Index LEAPS will also be European-style and will be subject to the same rules that govern the trading of Index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

*H. Position and Exercise Limits, Margin Requirements, and Trading Halts*

Exchange rules governing margin requirements,[29] position and exercise limits,[30] and trading halt procedures [31] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether given positions in full-value and reduced-value Index LEAPS comply with applicable position and exercise limits, positions in full-value and reduced-value Index LEAPS will be aggregated with positions in the regular Index options. For these purposes, ten reduced-value contracts will equal one full-value contract.

*I. Surveillance*

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the shares of the mutual funds comprising the Index. Further, the Intermarket Surveillance Group Agreement will be applicable to the trading of options on the Index.[32]

## III. Findings and Conclusions

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).[33] Specifically, the Commission finds that the trading of Emerging Markets Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with emerging Asian and Latin American market securities.[34]

The trading of options on the Emerging Markets Index, including full-value and reduced-value Index LEAPS, however raises several issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has adequately addressed these issues.

*A. Index Design and Structure*

The Commission finds that it is appropriate to treat the Emerging Markets Index as a narrow-based index under CBOE rules for purposes of applicable position and exercise limits, trading halt and suspension procedures, and margin treatment. Although the closed-end funds represented in the Index, in aggregate, hold in excess of 270 individual Asian and Latin American market securities,[35] the Emerging Markets Index is composed of securities representing only 23 closed-end mutual funds.[36] Accordingly, in light of the number of closed-end fund securities contained in the Index, the Commission believes it is proper to treat the Emerging Markets Index as narrow-

[26] See *supra* note 8.

[27] *Id.*

[28] See CBOE Rule 24.9(b).

[29] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[30] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to such rules, that a lower limit is warranted.

[31] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options and Index LEAPS may be halted or suspended whenever trading in underlying mutual fund shares whose weighted value represents more than 20% of the Index value are halted or suspended.

[32] The Intermarket Surveillance Group (''ISG'') was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options market. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. (''NASD''); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index features, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index features exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[33] 15 U.S.C. 78f(b)(5) (1988).

[34] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and full-value and reduced-value Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of Asian and Latin American market securities, excluding Japanese securities, represented through the holdings of closed-end mutual funds traded in the U.S.

[35] See August 16 Letter, *supra* note 12.

[36] The narrow-based Emerging Markets Index, which consists of the same component mutual fund components as the Index and is calculated by dividing the Index value by ten, is identical to the Emerging Markets Index.

based for the regulatory purposes noted above.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the close-end fund securities comprising the Index significantly minimizes the potential for manipulation of the Index. First, the overwhelming majority of the closed-end fund securities comprising the Index are actively traded, with an average daily trading volume for all such mutual fund shares for the period from July 1, 1994 through December 31, 1994, of approximately 64,335 shares per day. Second, the market capitalizations of the closed-end fund securities in the Index are large, ranging from a high of $824.31 million to a low of $46.36 million as of January 4, 1995, with the mean and median being $224 million and $155 million, respectively. Third, although the Index is composed of securities representing only 23 closed-end mutual funds, no particular security or group of closed-end fund securities dominates the Index. Specifically, as of January 4, 1995, no closed-end fund security contained in the Index accounted for more than 11.50% of the Index's total value and the percentage weighting of the five largest closed-end fund securities in the Index accounted for 37.56% of the Index's value.

Fourth, the proposed maintenance criteria will serve to ensure that: (1) The Index remains comprised substantially of closed-end mutual funds that are highly capitalized and that have liquid markets for their issued securities; and (2) the Index is not dominated by any one mutual security that does not satisfy the Exchange's options listing criteria, any one security held by one or more of the mutual funds represented in the Index, or securities from any one country held by one or more of the mutual funds represented in the Index. Specifically, in considering changes to the composition of the Index, 75% of the weight of the Index and 75% of the number of closed-end mutual funds represented in the Index must comply with the listing criteria for standardized options trading set forth in CBOE Rule 5.3, Interpretation and Policy .01 (for mutual fund securities that are not then the subject of standardized options trading) and CBOE Rule 5.4, Interpretation and Policy .01 (for mutual fund securities that are then the subject of standardized options trading).[37] Additionally, the CBOE is required to review the composition of the Index at least semiannually to ensure that the Index continues to meet these ''75%'' requirements.

Further, at least semiannually, based on the most recent Commission filings by the closed-end funds represented in the Index, the CBOE will review the holdings of each closed-end fund and will promptly notify the Commission if: (1) Any security held by one or more of the closed-end funds represented in the Index, in aggregate, accounts for more than 5% of the weight of the Index; or (2) securities from any one country held by one or more of the closed-end funds represented in the Index, in aggregate, account for more than 25% of the weight of the Index. Similarly, the CBOE will promptly notify the Commission staff at any time that it determines that the shares of a closed-end fund contained in the Index account for more than 15% of the weight of the Index if the shares of the mutual fund do not satisfy the listing eligibility requirements in CBOE's rules.[38]

Finally, the CBOE will promptly notify the Commission staff at any time that it determines that either the Index or the shares of one or more of the closed-end funds comprising the Index fail to satisfy any of the above maintenance criteria. In such an event, the Exchange will not open for trading any additional series of Index options or LEAPS unless the Exchange determines that such failure is not significant, and the Commission staff affirmatively concurs in that determination, or unless the Commission specifically approves the continued listing of that class of Index options or Index LEAPS pursuant to a proposal filed in accordance with Section 19(b)(2) of the Act.

For the above reasons, the Commission believes that these criteria minimize the potential for manipulation of the Index and eliminate domination concerns.

*B. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Emerging Markets Index options, including full-value and reduced-value Emerging Markets LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-trading options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized index options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Emerging Markets Index options and full-value and reduced-value Emerging Markets Index LEAPS.

*C. Surveillance*

The Commission notes that predominantly because of the lack of relevant market information sharing agreements, the shares of only one of the closed-end funds contained in the Index (Asia Pacific Fund) are eligible for standardized options trading.[39]

The Commission believes, however, that based on the maintenance criteria discussed above, the CBOE has addressed the concerns that the Commission expressed in approving the listing of options on individual country funds.[40] These maintenance criteria, among other things, ensure that the Index will not become a surrogate for trading options on either the closed-end mutual funds represented in the Index or individual Asian or Latin American market securities held by those component mutual funds for which standardized options could not otherwise be traded and minimize the potential for manipulation of the value of the Index.[41]

Second, in approving the listing of options on individual country funds, the Commission determined that if a fund is ''diversified,'' as defined in the Investment Advisers Act of 1940

[37] Additionally, mutual fund securities contained in the Index must be ''reported'' securities and must be traded on the Amex or the NYSE or must be Nasdaq/NM securities. The CBOE is also limited in the number of mutual funds that can be represented in the Index without having to obtain Commission approval. See *supra* notes 14 and 15.

[38] See *supra* notes 16 and 17.

[39] Options on the securities by international funds are eligible for standardized options trading where those securities meet or exceed the Exchange's established uniform options listing standards (see *supra* note 16) and (1) the Exchange has a market information sharing agreement with the primary home exchange on which each of the foreign securities comprising the fund's portfolio trade, (2) the fund is classified as a diversified fund, as that term is defined by Section 5(b) of the Investment Company Act, 15 U.S.C. § 80a–5(b), and the fund's portfolio is composed of securities from five or more countries, or (3) the listing of a particular international fund option is specifically approved by the Commission. See Securities Exchange Act Release No. 33068 (October 19, 1993), 58 FR 55093 (October 25, 1993) (''Country Fund Approval Order'').

[40] *Id.*

[41] See *supra* Section III.A.

(''Advisers Act''),[42] and holds securities from five or more countries, a surveillance sharing agreement is not required between the Exchange and the primary foreign markets for the securities held by the closed-end fund. In that case, it was determined that the portfolio of such a closed-end fund would be significantly diverse so as to reduce the likelihood that the price of the securities issued by the closed-end fund could be manipulated. Even though the shares of only one of the closed-end funds contained in the Index is classified as ''diversified,'' the Commission believes that by combining the securities of these mutual funds together in the Index, the Index, as a whole, replicates essentially a ''diversified'' fund. Specifically, the Index consists of securities representing 23 closed-end mutual funds with those mutual funds holding positions, in aggregate, in more than 270 different stocks from more than 14 emerging Asian and Latin American markets.[43] The Commission believes, therefore, that the Index as a whole achieves the diversity of holdings that the Commission found to be sufficient in the Country Fund Approval Order to minimize the Commission's concerns about potential manipulation. As a result, for the reasons stated herein and in the Country Fund Approval Order,[44] the Commission believes that the lack of market surveillance sharing agreement does not raise substantial regulatory concerns.

Third, because the Index is composed solely of the securities issued by closed-end mutual funds, the Commission's concerns regarding potential manipulation of the Index are further reduced. As discussed in the Country Fund Approval Order, in contrast to other foreign securities products, international closed-end mutual funds hold portfolios of securities chosen by portfolio managers.[45] Although the composition of the portfolio of each mutual fund represented in the Index is published on a semiannual basis, the securities held by each mutual fund represented in the Index can be changed at any time at the discretion of the portfolio managers, as long as their investment decisions are consistent with the stated investment objectives and policies of the particular closed-end fund. For these reasons, the Commission believes that it generally would be difficult for someone to use options on the Index to attempt a manipulation of the market for any particular security issued by a closed-end fund represented in the Index or to attempt a manipulation of the Index through a manipulation of the shares of the mutual funds comprising the Index.

The Commission notes that generally the only people who could attempt such a manipulation would be people who have access to ''inside'' information about the composition of the portfolio of a closed-end fund and the trading activities of the mutual fund's portfolio manger. The Advisors Act, and the rules promulgated thereunder, contain provisions designed to detect and deter certain advisory employees and affiliates from trading in any securities based on ''inside'' information about the investment decisions of a closed-end fund. Rule 204–2(a)(12) under the Advisers Act requires an investment adviser to make and keep accurate records of every transaction in a security in which the investment advisor or any advisory representative has a beneficial interest. Accordingly, the Commission believes that the Advisers Act gives it the authority to review the trading activities of anyone who is likely to have access to the information necessary to use options on the Index to attempt a manipulation of the relevant markets.

Finally, even though the CBOE does not in this case have market information sharing agreements with each of the relevant foreign markets, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information regarding the trading of the mutual fund securities comprising the Index.[46] The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value Index LEAPS less readily susceptible to manipulation.[47]

*D. Market Impact*

The Commission believes that the listing and trading on the CBOE of Emerging Markets Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the markets, for the securities issued by the closed-end funds represented in the Index.[48] First, as described above, the securities or no one closed-end fund or group of closed-end funds represented in the Index dominates the weight of the Index. Second, the maintenance criteria for the Index ensure that: (1) The Index will be substantially comprised of closed-end fund securities that satisfy the Exchange's listing standards for standardized options trading; and (2) no individual security held by one or more of the mutual funds represented in the Index and no individual country represented by those holdings will dominate the Index.[49] Third, because the securities issued by each of the closed-end funds comprising the Index must be ''reported securities'' as defined in Rule 11Aa3–1 of the Act, the securities issued by these closed-end funds generally will be actively-traded, highly-capitalized securities. Fourth, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Emerging Markets Index options, including full-value and reduced-value Index LEAPS, based on the opening prices of the closed-end fund securities comprising the Index is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for the closed-end fund securities underlying options on the Index.[50]

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides objective maintenance criteria which, for the reasons stated above, should minimize the potential for manipulation of the Index and the closed-end mutual fund securities comprising the Index. Further, as discussed above, the Commission believes that these maintenance criteria significantly strengthen the customer protection and surveillance aspects of the proposal, as originally proposed.[51] Moreover, the

[42] 15 U.S.C. 80b–1 *et seq.* (1988).

[43] See August 16 Letter, *supra* note 12.

[44] See Country Fund Approval Order, *supra* note 39.

[45] *Id.*

[46] See *supra* note 32.

[47] See, *e.g.*, Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing of index options and index LEAPS on the CBOE Biotech Index).

[48] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Scott Lyden, CBOE, dated June 27, 1994.

[49] See *supra* Section III.A.

[50] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[51] See *supra* Section III.A.

Commission believes that reducing the number of component funds in the Index by two is not a material change that raises regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the 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, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–94–19 and should be submitted by March 1, 1995.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–CBOE–94–19), as amended, is approved.[53]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[52] 15 U.S.C. 78s(b)(2) (1988).

[53] The Commission notes that prior to listing Index options or Index LEAPS, the CBOE will be required to review the then most recent semiannual reports filed with the Commission by each of the closed-end funds represented in the Index to ensure that the closed-end fund securities comprising the Index, as well as the holdings of each of the closed-end funds represented in the Index, satisfy, at the time of listing, the listing criteria discussed above.

[54] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–35316; File No. SR–NASD–95–03]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through April 28, 1995

February 1, 1995.

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 January 25, 1995, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service (''OTCBB Service'' or ''Service'') in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as ''OTC Equities'').[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level ⅔ Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that was scheduled to expire on January 31, 1995.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through April 28, 1995. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed and comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service.[4] For the month ending November 30, 1994, the Service reflected the market making positions of 411 NASD member firms displaying quotations/indications of interest in approximately 5,229 OTC Equities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, ''foreign/ADR issues'') will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] With the Commission's January 1994 approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 35172 (December 28, 1994), 60 FR 1820.

[4] The Commission notes that the NASD has filed with the Commission Amendment Nos. 1 and 2 to File No. SR–NASD–92–07, concerning the eligibility of unregistered foreign securities and American Depositary Receipts for inclusion in the OTCBB. The amendments were published in the **Federal Register** for comment on November 18, 1994. See Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808.

Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for ''penny stocks.''

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1), 15A(b) (6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through April 28, 1995, is fully consistent with the foregoing provisions of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the rule change will not 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*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service was scheduled to extend through January 31, 1995. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,229 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Part XII of Schedule D to the NASD By-Laws.

## 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, N.W., Washington, D.C. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 1, 1995.

## V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System (''QEQS'') status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application with the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to Section 17B(b).

exchanges and quoted in the OTCBB by NASD members.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through April 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–3036 Filed 2–7–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20877; 812–9378]**

## Cityfed Financial Corp.; Notice of Application

February 2, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** Cityfed Financial Corp. (''Cityfed'').

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 6(e) of the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder until the earlier of one year from the date of the requested order or such time as Cityfed would no longer be required to register as an investment company under the Act. The requested exemption would extend an exemption originally granted until March 15, 1995.

**FILING DATE:** The application was filed on December 20, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 27, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Cityfed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank (''City Federal''). City Federal was the source of substantially all of Cityfed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (the ''OTS'') placed City Federal into receivership and appointed the Resolution Trust Corporation (the ''RTC'') as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B., whose deposits, assets, and liabilities in turn were acquired by City Savings, F.S.B. (''City Savings''). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, Cityfed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. As of September 30, 1994, Cityfed held cash and securities of approximately $9.03 million. Because of Cityfed's asset composition, it may be an investment company under the Act. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against Cityfed and certain Cityfed officers and directors, Cityfed could not acquire an operating company within the one year safe harbor. The expiration of the safe harbor period necessitated the filing of an application for exemption from all provisions of the Act, with certain exceptions. In 1994, Cityfed was granted conditional relief from all provisions of the Act until March 15, 1995.[1]

3. While Cityfed's board of directors has considered from time to time whether to engage in an operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against Cityfed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On June 2, 1994, the OTS issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties (''Notice of Charges'') against Cityfed and certain current or former directors and, in some cases, officers of Cityfed and City Federal. The Notice of Charges requests that an order be entered by the Director of the OTS requiring Cityfed to make restitution, reimburse, indemnify or guarantee the OTS against loss in an amount not less than $118.4 million, which the OTS alleges represents the regulatory capital deficiency reported by City Federal in the fall of 1989. The Notice of Charges provides that a hearing will be held before an administrative law judge on the question of whether a final cease and desist order should be issued against Cityfed. As of the date of the filing of the application, no date has been set for such hearing.

5. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist (''Temporary Order'') against Cityfed. The Temporary Order required Cityfed to post $9.0 million as security for the payment of the amount sought by the OTS in its Notice of Charges. Cityfed unsuccessfully petitioned the district court for an injunction against the Temporary Order. Cityfed has appealed to the Court of Appeals. On October 26, 1994, Cityfed and the OTS entered into an Escrow Agreement (''Escrow Agreement'') with CoreStates Bank, N.A. (''CoreStates'') pursuant to which Cityfed transferred substantially all of its assets to CoreStates for deposits into an escrow account to be maintained by CoreStates. Cityfed's assets in the escrow account continue to be invested in money market instruments with a maturity of one year or less and money market mutual funds. Withdrawals or disbursements from the escrow account are not permitted without the written authorization of the OTS, other than for (a) monthly transfer to Cityfed in the amount of $15,000 for operating expenses, (b) the disbursement of funds

[1] Cityfed Financial Corp., Investment Company Act Release Nos. 20074 (Feb. 15, 1994) (notice) and 20135 (Mar. 15, 1994) (order).

on account of purchases of securities by Cityfed, and (c) the payment of the escrow fee and expenses to CoreStates. The Escrow Agreement also provides that CoreStates will restrict the escrow account in such a manner as to implement the terms of the Escrow Agreement and to prevent a change in status or function of the escrow account unless authorized by Cityfed and the OTS in writing.

6. On December 7, 1992, the RTC filed suit against Cityfed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal (the ''First RTC Action''). In connection with this action, the RTC sought a court order to place Cityfed's assets under the control of the court. On January 5, 1993, the RTC and Cityfed entered into an agreement (the ''Agreement'') whereby the RTC would refrain from seeking the above order and Cityfed could continue to make payments for ordinary and reasonable business expenses and certain legal fees. In light of the filing by the OTS of the Notice of Charges on June 2, 1994, the RTC and Cityfed agreed to dismiss without prejudice the RTC's claim against Cityfed in the First RTC Action.

7. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans (the ''Second RTC Action''). The RTC seeks in excess of $200 million in damages. Under Cityfed's bylaws, Cityfed may be obligated to indemnify these former officers and directors and advance their legal expenses. Cityfed generally has agreed to advance expenses in connection with these requests. Because of the Temporary Order and the Escrow Agreement, however, Cityfed is not continuing to advance expenses in connection with these requests. Cityfed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

8. Currently, Cityfed's stock is traded sporadically in the over-the-counter market. Cityfed has one employee who is president, chief executive officer, and treasurer. Cityfed's secretary does not receive any compensation for her service. If Cityfed is unable to resolve the above claims successfully, Cityfed may seek protection from the bankruptcy courts or liquidate. Cityfed asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved.

9. During the term of the proposed exemption, Cityfed will comply with sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, subject to the following modifications. With respect to section 17(d), Cityfed represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of Cityfed have existing rights under the plan. Cityfed believes that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d–1 thereunder. Because the plan was adopted when Cityfed was an operating company and to the extent there are existing right under the plan, Cityfed seeks an exemption to the extent necessary from section 17(d). In addition, Cityfed may become subject to the jurisdiction of a bankruptcy court. With respect to transactions approved by the bankruptcy court, applicant requests an exemption from sections 17(a) and 17(d) as further described in condition 3 below.

**Applicant's Legal Analysis**

1. Section 3(a)(1) defines an investment company as any issuer of a security who ''is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities.'' Section 3(a)(3) further defines as investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash). Cityfed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, applicant requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions.

2. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. Cityfed believes that it meets these criteria.

3. Cityfed believes that its failure to become primarily engaged in a non-investment business by March 15, 1995 is due to factors beyond its control. Because of outstanding and potential claims against Cityfed and certain of its officers and directors, Cityfed cannot acquire an operating company. Cityfed has diligently pursued its claims against others and has taken steps to determine the extent of its contingent liabilities. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, Cityfed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

4. Cityfed requests an order that would exempt it from all provisions of the Act, subject to certain exemptions, until the earlier of one year from the date of any order issued on this application or such time as Cityfed would no longer be required to register as an investment company under the Act.

**Applicant's Conditions**

Cityfed agrees that the requested exemption will be subject to the following conditions, each of which will apply to Cityfed from the date of the order until it no longer meets the definition of an investment company or during the period of time it is exempt from registration under the Act:

1. Cityfed will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by Cityfed's board of directors, subject to two exceptions:

a. Cityfed may make an equity investments in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by Cityfed's board of directors; and

b. Cityfed may invest in one or more money market mutual funds that limit their investments to ''Eligible Securities'' within the meaning of rule 2a–7(a)(5) promulgated under the Act.

2. Cityfed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that Cityfed and other persons, in their transactions and relations with Cityfed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36

through 45, and 47 through 51 of the Act, and the rules thereunder, as if Cityfed were a registered investment company, except insofar as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of Cityfed may engage in a transaction that otherwise would be prohibited by these sections with Cityfed:

(a) If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to Cityfed, and (ii) the participation of Cityfed in the proposed transaction will not be on a basis less advantageous to Cityfed than that of other participants; and

(b) In connection with each such transaction, Cityfed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–3111 Filed 2–7–95; 8:45 am]

BILLING CODE 8010–01–M

## Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Fund American Enterprises Holdings, Inc., Common Stock, $1.00 Par Value) File No. 1–8993

February 2, 1995.

Fund American Enterprises Holdings, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Stock Exchange, Inc. (''PSE''). The Security will continue to be listed on the New York Stock Exchange (''NYSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following: (1) The average monthly volume of the Security on the PSE for the past six months has been diminutive; (2) it is difficult to justify the expense of the annual listing fee; (3) all public documents that the Company files must be filed in triplicate to the PSE, resulting in a significant amount of labor and other expense associated with the maintenance of the PSE listing; and (4) the Company no longer has a West Coast business presence or significant ownership base which were important considerations in the original listing.

Any interested person may, on or before February 24, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95–3110 Filed 2–7–95; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### New Route Opportunities (U.S.-Peru); Notice

By this Notice we invite certificate applications from U.S. air carriers interested in providing combination and all-cargo services in the U.S.-Peru market.

Under the 1986 Air Transport Agreement between the United States and Peru there are no limits on the number of U.S. carriers that may be designated to provide scheduled combination or all-cargo services. The number of frequencies these carriers could operate, however, was limited to 16.5 weekly narrow body frequencies for combination services and five weekly narrow body frequencies for all-cargo services. By an Exchange of Notes on January 13, 1995, the Agreement was amended to increase the number of frequencies available to U.S. carriers for the operation of scheduled combination and all-cargo services. Under the amended Agreement, U.S. carriers may operate a maximum of 21 weekly narrow-body frequencies or their wide-body equivalent for combination services; and eight frequencies per week with narrow-body aircraft or their wide-body equivalent for all-cargo air services, effective January 15, 1995.[1]

There has been no change to the route schedules. This means that designated U.S. carriers may provide combination services from the United States via intermediate points to Lima, and beyond to: La Paz, Bolivia and beyond to Asuncion, Paraguay (to be operated as one route); Santiago, Chile; and Buenos Aires, Argentina (Santiago and Buenos Aires to be served on separate flights beyond Lima).[2] Designated U.S. all-cargo airlines are permitted to operate between Miami and Lima via the intermediate points Panama City, Panama; Guayaquil, Ecuador; and Bogota and Cali, Colombia.[3]

American Airlines currently holds the 16.5 narrow-body frequencies for combination services, and Challenge Air holds the 5 weekly narrow-body frequencies for all-cargo services.[4] Therefore, 4.5 narrow-body combination and 3 narrow-body all-cargo frequencies are available new long-term allocations.[5]

Carriers interested in using these new opportunities should file certificate applications including attendant requests for frequency allocations within 14 calendar days of the date of this notice. Answers to any applications filed will be due seven calendar days thereafter; replies to any answers filed will be due within five calendar days after the answer date.

Except for the procedural dates, certificate applications should conform to Part 302, Subpart Q. Applications should be filed with the Department's Docket Section, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Further procedures for acting on the applications filed, if necessary, will

[1] 1.5 narrow-body aircraft (DC8, MD80, B707, B727, B737, B757 or similar aircraft) is considered equivalent to one wide-body aircraft (L1011, DC10, A300, B747SP, B767 or similar aircraft). Two narrow-body aircraft is considered equivalent to one B747–100 or similar aircraft.

[2] Designated U.S. carriers for combination services may operate via the following intermediate points: Panama City, Panama; Guayaquil and Quito, Ecuador; and on a blind-sector basis Bogota and Cali, Colombia.

[3] Service to Guayaquil, Bogota and Cali may be operated on a blind-sector basis only.

[4] American Airlines was awarded certificate authority to serve Peru by Order 90–5–5. It has an application pending for renewal of its certificate in Docket 48343. Challenge was granted exemption authority to serve Peru in 1987 (Order 87–2–38) and has been allocated the five available all-cargo frequencies. (See Orders 87–7–52, 89–7–42, 91–6–38 and 93–3–38.) Challenge has a pending application in Docket 50009 for renewal of its underlying authority and its frequency allocation.

[5] By Order 94–12–21, the Department allocated United Air Lines, Inc. the available 4.5 weekly combination frequencies on a temporary basis for the period January 15, 1995 through April 15, 1995, while we process a case for longer-term authority.

be established in the future by Department notice or order.

Dated: February 2, 1995.

**Paul L. Gretch,**

*Director, Office of International Aviation.*

[FR Doc. 95–3083 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–62–P

## Federal Aviation Administration

## Advisory Circular (AC) 25–19, Certification Maintenance Requirements

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

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 25–19, Certification Maintenance Requirements. The AC provides guidance on the selection, documentation, and control of Certification Maintenance Requirements (CMR's). It also provides a rational basis for coordinating the Maintenance Review Board (MRB) and CMR selection processes in order to minimize the impact of CMR's on airplane operators.

**DATES:** Advisory Circular 25–19 was issued on November 28, 1994, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, in Renton Washington.

### How To Obtain Copies

A copy of AC 25–19 may be obtained by writing to the U.S. Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

Issued in Renton, Wash., on January 20, 1995.

**Neil D. Schalekamp,**

*Acting Manager, Transport Standards Staff Transport Airplane Directorate, Aircraft Certification Service, ANM–100.*

[FR Doc. 95–3124 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–M

## Receipt of Noise Compatibility Program and Request for Review; Palm Springs Regional Airport (PSP), Palm Springs, California

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the city of Palm Springs for Palm Springs Regional Airport (PSP), Palm Springs, California under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as ''the Act'') and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for were in compliance with applicable requirements effective November 28, 1994. The proposed Noise Compatibility Program will be approved or disapproved on or before July 25, 1995.

**EFFECTIVE DATE:** The effective date of the start of the FAA's review of the Noise Compatibility Program is January 26, 1995. The public comment period ends March 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Howard S. Yoshioka, Planning Section Supervisor, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, (310) 297–1250. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Palm Springs Regional Airport which will be approved or disapproved on or before July 25, 1995. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Palm Springs Regional Airport, effective on January 26, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 15, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 615, Washington, DC 20591;

Federal Aviation Administration, Western-Pacific Region, AWP–600, P.O. Box 92007 WPC, Los Angeles, California 90009–2007;

Mr. Allen F. Smoot, A.A.E., Director of Aviation, City of Palm Springs, Department of Aviation, Palm Springs Regional Airport, P.O. Box 2743, Palm Springs, California 92263–2743.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

**Herman C. Bliss,**

*Manager, Airports Division.*

[FR Doc. 95–3125 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–M

## Notice of Intent To Prepare Environmental Impact Statement (EIS) for Proposed Localizer—Type Directional Aid (LDA) at the Santa Monica Municipal Airport, Santa Monica, CA

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

**ACTION:** Notice of intent to prepare an EIS and notice of scoping meetings.

**SUMMARY:** In compliance with the National Environmental Policy Act (NEPA), and Council on Environmental Quality (CEQ) Policy Regulations (40 CFR 1500–1508), FAA will prepare an EIS to evaluate potential environmental

impacts of construction and operation of a proposed LDA at the Santa Monica Municipal Airport, Santa Monica, CA.

The FAA is the lead agency and will assess the potential environmental impacts of the proposed LDA and alternatives. In conducting the planning process the FAA will involve the public and other agencies, as appropriate.

**DATES:** Written comments on the scope of the EIS will be accepted at the address below until May 1, 1995.

**ADDRESSES:** Written comments on this E.I.S. may be sent to the FAA at the following address:

Mail Address: Federal Aviation Administration, Western-Pacific Region, AWP–452.21, P.O. Box 92007, World Way Postal Center, Los Angeles, CA 90009–2007.

Special Deliveries: Federal Aviation Administration, Western-Pacific Region, AWP–452.21, 15000 Aviation Boulevard, Hawthorne, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Duarte, Federal Aviation Administration, (310) 297–0157.

**SUPPLEMENTARY INFORMATION:** The January 17, 1994 Northridge, CA earthquake caused extensive damage to the then existing Localizer-Type Directional Aid (LDA) platform, resulting in the LDA being taken out of service and the platform being dismantled. A replacement for the instrument landing aid utilizing the existing equipment is proposed in the vicinity of the original LDA location.

One of the goals of the FAA is to install Instrument Landing Systems (ILSs) which have the ability to provide guidance to pilots of properly equipped aircraft, to enhance landing under conditions of reduced ceilings and lower visibility. In order to do this, ILSs mut be appropriately located based on FAA criteria. The LDA meets these criteria and is compatible with the Airport Master Plan and the January 31, 1984 Santa Monica Airport Agreement between the City of Santa Monica and the FAA.

The EIS will include a discussion of the proposed acting and alternatives, affected environment, potential impacts or consequences of the proposed action, and potential mitigation measures.

### Alternatives

In addition to the proposed action, the following alternatives may be considered in the E.I.S.: (1) Global positioning satellite (GPS) instrument approach procedure, (2) microwave landing system (MLS) and (3) the no action alternative under which the LDA would not be built.

### Public Scoping Meetings

To insure the widest possible scope of public concerns and issues, the FAA solicits comments for consideration and possible inclusion in the Draft E.I.S. All interested persons are invited to attend scoping meetings to be announced in the local media.

Issued in Hawthorne, California on January 27, 1995.

**Donald Tom,**

*Manager, Airway Facilities Division, AWP–400, Western-Pacific Region.*

[FR Doc. 95–3126 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–13–M

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## Federal Highway Administration

## Environmental Impact Statement: Sauk County, Wisconsin

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 12 between Lake Delton and Sauk City in Sauk County, Wisconsin.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5968.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement to improve US Highway 12 (USH 12) from Interstate 90/94 at Lake Delton South through West Baraboo to the existing divided roadway south of Ski Hi Road, a distance of 19.3 km (12 mi).

The improvement of USH 12, which is essentially a two-lane rural highway, is considered necessary to provide capacity for existing and projected traffic demand and to reduce the high collision rate.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives within the I 90/94—Ski Hi Road Section including (1) *No-Build*—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) *Upgrade the Existing Facility*—this alternative would improve the traffic handling capability and safety by reconstruction of the existing route; (3) *New Alignment*—this alternative would provide for the construction of a four-lane divided expressway on new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 112372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued January 27, 1995.

**Richard C. Madrzak,**

*Statewide Projects Engineer, Madison, Wisconsin.*

[FR Doc. 94–3048 Filed 2–7–94; 8:45 am]

BILLING CODE 4910–22–M

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## Maritime Administration

## Notice of Merger of Approved Trustee

Notice is hereby given that all of the right, title and interest of First City, Texas-Beaumont, National Association, Beaumont, Texas, was transferred and assigned to New First City Texas-Beaumont, Beaumont, Texas, on October 30, 1992. New First City Texas-Beaumont, merged with and into Texas Commerce Bank-Beaumont, National Association, effective February 13, 1993. Texas Commerce Bank-Beaumont, National Association merged with and into Texas Commerce Bank, National Association, P. O. Box 2558, Houston,

Texas 77252- 8341, with Texas Commerce Bank, National Association as the surviving corporation in the merger.

Dated: February 2, 1995.

By Order of the Maritime Administrator.

**Murray A. Bloom,**

*Acting Secretary.*

[FR Doc. 95–3127 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–81–P

## Notice of Merger of Approved Trustee

Notice is hereby given that Ameritrust Texas, National Association, Houston, Texas, changed its name to Texas Commerce Trust Company, National Association effective September 28, 1993. Texas Commerce Trust Company, National Association merged with and into Texas Commerce Bank, National Association, P. O. Box 2558, Houston, Texas 77252–8341, effective December 17, 1993, with Texas Commerce Bank, National Association as the surviving corporation in the merger.

Dated: February 2, 1995.

By Order of the Maritime Administrator.

**Murray A. Bloom,**

*Acting Secretary.*

[FR Doc. 95–3128 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–81–P

## Notice of Merger of Approved Trustee

Notice is hereby given that New First City Texas-Beaumont, National Association, Beaumont, Texas, merged with and into Texas Commerce Bank, National Association-Beaumont, P. O. Box 2751, Beaumont, Texas 77704, effective February 13, 1993, with Texas Commerce Bank, National Association-Beaumont as the surviving corporation in the merger.

Dated: February 2, 1995.

By Order of the Maritime Administrator.

**Murray A. Bloom,**

*Acting Secretary.*

[FR Doc. 95–3130 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–81–P

## Research and Special Programs Administration

**[Docket No. PS–132; Notice 2]**

## Office of Pipeline Safety; Risk Assessment Prioritization (RAP)

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

**ACTION:** Request for information.

**SUMMARY:** RSPA, through the Office of Pipeline Safety (OPS), is implementing a pipeline Risk Assessment Prioritization (RAP) process and invites representatives of industry, government agencies, environmental organizations, public safety organizations and other members of the public to contribute information on solutions to pipeline safety issues. The proposed solutions are a vital part in developing the RAP process. Through the RAP process, the solutions will be prioritized and will become a basis upon which OPS management will decide how to commit available resources.

**DATES:** Responses to this request for information should be submitted on or before April 10, 1995. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Ramirez, (202) 366–9864, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

**SUPPLEMENTARY INFORMATION:**

### Background on RAP

OPS prescribes and enforces the safety standards for the transportation of gases and hazardous liquids by pipeline and for liquified natural gas facilities. OPS frequently must allocate its resources to address safety actions identified by authorities outside of the agency, including Congress, the National Transportation Safety Board, and the General Accounting Office, OPS believes that pipeline safety resources can be most effectively utilized through analyzing and prioritizing of potential pipeline safety actions based on risk assessment.

The RAP process was developed following a thorough assessment of OPS operations conducted in 1991 and the adoption in 1992 of a set of goals necessary to enable OPS to respond most effectively to increasing pipeline safety concerns. RAP is being developed as a management process with which OPS may: identify pipeline safety and environmental protection issues; identify potential solutions for these issues; assess the relative impact of each solution on the likelihood or consequences of pipeline accidents; estimate the cost to OPS and industry of each proposed solution; and allocate available OPS resources to the most cost-effective set of solutions.

It is likely that OPS will not have the resources necessary to implement, in the near term, all of the solutions proposed by industry, OPS and other stakeholders. However, the RAP process will help ensure that OPS can assign available resources to solutions that will produce the greatest reduction in pipeline risks and environmental risks.

### Highlights of the RAP process

The RAP process will utilize basic risk-based prioritization and resource allocation models to help structure and focus OPS management decisions. In addition, the process will facilitate effective communication and interactions with OPS stakeholders through a common understanding of pipelines safety concerns.

The details of the RAP process are described in 58 FR 51402 dated October 1, 1993. The sequence of steps in the RAP process is as follows:

a. Chart Pipeline Safety Subjects.

b. Poll for Issues—**Federal Register** Notice dated Oct. 1, 1993.

c. Insert Mandated Issues.

d. Compile Issues List.

e. Poll for Solutions—Current stage in the process.

f. Insert Mandated Solutions.

g. Compile Solutions List.

h. Set Rating Criteria.

i. Rate Each Solution.

j. Estimate Economic Impact.

k. Assemble Rated Priorities.

l. Identify Mandates.

m. Estimate Resource Availability.

n. Assign Resources.

o. Issue Action Plan.

p. Monitor Performance.

q. Maintain Data Base.

r. Repeat Cycle.

### Request for Information

The purpose of this notice is to solicit stakeholder participation in the second data gathering step of the RAP process by collecting solution statements associated with pipeline issues described in Section B of this notice. After OPS has received and consolidated the solutions, including solutions identified by OPS in connection with its ongoing risk determination efforts (e.g., accident investigations, special studies), OPS will hold a public meeting to ensure that interested stakeholders have a thorough understanding of the issues and solutions as well as the remainder of the RAP process.

**Form for a Solution Statement**

To aid in processing solution statements, OPS suggests a standard format. Section A information may be provided one time for all solutions submitted from one responder. A solution statement should contain:

A. The identification of the responder per Section A below.

B. The B-code designation of the issue being addressed, per Section B below.

C. The complete proposed solution description. See Section C below for discussion of a solution statement.

D. The type of solution that is being proposed, per Section D below.

E. The kind of facility affected, selected from Section E below.

As a guide for preparing solution statements, the following examples are provided.

Example 1.
A. Responder identification
B. B4.3 (Internal Corrosion)
C. A regulation requiring the periodic use of smart pigs
D. D3
E. E2 (Liquid transportation lines)

Example 2.
A. Responder identification
B. B4.3 (Internal Corrosion)
C. Financial support of research to improve smart pigs
D. D9 (Support research and development)
E. E2 (Liquid transportation lines)

*Section A. Responder Identification*

A1 Responder name
A2 Responder position or title
A3 Responder organization
Responder organization type (Operators indicate all applicable)
A4a Operator, hazardous liquid, gathering
A4b Operator, hazardous liquid, transportation
A4c Operator, gas, gathering
A4d Operator, gas, transmission
A4e Operator, gas, distribution
A4f Operator, LNG facility
A4g Pipeline industry association
A4h Pipeline contractor
A4i Pipeline supplier
A4j Environmental organization
A4k Consumer safety organization
A4l Government, federal
A4m Government, state
A4n Government, municipal
A4o Public
A4p Other (Please specify)
A5 Address
A6 Contact name (If other than responder)
A7 Contact phone number
A8 Contact facsimile number

*Section B. Consolidated Issues List*

The following consolidated issues list represents the key elements of the issues that the respondents provided to RSPA's request for information, 58 FR 51402; October 1, 1993. OPS analyzed over 400 responses, converted proposed solution statements into issues statements, and to an appropriate degree, consolidated variations of similar issue statements. In preparing proposals for solutions, respondents are encouraged to give their widest interpretation to any of the 189 issues listed below. A solution statement may apply to more than one issue provided each issue being addressed is listed using the designated issue code (i.e., B1, B2, etc).

The consolidated list is organized into five categories of issues contributing to the probability of pipeline accident occurrence; five categories of issues contributing to the consequence of pipeline accidents and one category that includes issues directed at identifying and managing risks. The five categories for probability and consequence are, Design, Construction, Operations and Maintenance, Corrosion and Outside Force.

B1 DESIGN ISSUES CONTRIBUTING TO THE PROBABILITY OF ACCIDENT OCCURRENCE DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B1.1 • Allowable maximum operating pressure
B1.2 • Breakout tanks
B1.3 • Materials selection
B1.3.A —Steel pipe toughness
B1.3.B —Steel pipe weldability
B1.4 • Obsolescent technology
B1.5 • Obstacles to instrumented internal inspection
B1.6 • Offshore pipelines
B1.7 • Railroad rights-of-way
B1.8 • Thin wall, high strength pipe
B1.9 • Underwater hazards to navigation
B1.10 • Valve definitions

B2 CONSTRUCTION ISSUES CONTRIBUTING TO THE PROBABILITY OF ACCIDENT OCCURRENCE DUE TO;

or DUE TO LACK OF;
or DUE TO INADEQUATE;
B2.1 • Hydrostatic testing
B2.1.A —Errors
B2.1.B —Procedures
B2.2 • Inspection
B2.2.A —for errors and flaws
B2.2.B —of girth welds
B2.2.C —for rock impingement
B2.2.D —of welded split sleeves
B2.3 • Maps and records
B2.4 • Material and equipment noncompliance
B2.4.A —pre-1970 (low frequency) ERW pipe
B2.4.B —railroad transportation fatigue cracks
B2.5 • Plastic pipe electrofusion joints
B2.6 • Plastic pipe fusion joints
B2.6.A —dissimilar materials
B2.7 • Specifications
B2.8 • Tracer wire wraps around plastic pipe

B3 OPERATIONS AND MAINTENANCE ISSUES CONTRIBUTING TO THE PROBABILITY OF ACCIDENT OCCURRENCE DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B3.1 • Accident investigations
B3.2 • Allowable maximum operating pressure
B3.2.A —Exceeding
B3.2.A.1 >grandfathered pipelines
B3.2.B —Low safety margin relative to test pressure
B3.2.B.1 >in Class 1 locations
B3.2.C—Reduction following an incident
B3.3 • Branch service lines
B3.4 • Breakout tanks
B3.5 • Baypass lines/direct sales lines/farm taps
B3.6 • Control systems
B3.6.A —Excessive false alarms
B3.7 • Customer owned gas lines
B3.8 • Drug and alcohol abuse
B3.9 • Equipment failure
B3.10 • HVL facilities
B3.10.A —Two phase flow
B3.11 • Hydrostatic testing
B3.11.A —Exemption from
B3.11.B Periodic
B3.12 • Inspections
B3.12.A —Third party construction activity
B3.12.B —Encroachment
B3.12.C —Dents and gouges
B3.12.D —Cased crossings
B3.12.E —Minimum cover
B3.12.F —Obstacles to instrumented internal inspection
B3.12.G —Reporting requirements after voluntary use of instrumented internal inspection
B3.12.H —Requirements for instrumented internal inspection
B3.12.I —Technical variability among instrumented internal inspection.
B3.13 • Liquefied natural gas/petroleum gas (LNG/LPG) systems
B3.13.A —Dense gas dispersion model
B3.13.B —Mobile LNG facilities
B3.14 • Pipeline Marker destruction
B3.15 • Obsolescent technology
B3.16 • Offshore pipelines
B3.17 • Operator qualification
B3.17.A —Excavator
B3.17.B —Pipeline
B3.17.C —Master meter system
B3.17.D —Liquid petroleum gas

distribution system
B3.18 • Pipeline age
B3.19 • Pipeline realignment
B3.20 • Plans and procedures
B3.21 • Protection of pipeline employees
B3.22 • Railroad rights-of-way
B3.23 • Records and reports
B3.23.A —Annual
B3.23.B —Incident
B3.24 • Reduced operating staff
B3.25 • Repairs/rehabilitation
B3.25.A —Casing shorts
B3.25.B —Cast iron pipe
B3.25.B.1 >Aging
B3.25.B.2 >Graphitization
B3.25.B.3 >Movement
B3.25.C —Pipe support during
B3.26 • Small gas distribution systems
B3.27 • Training
B3.28 • Underground utility location
B3.29 • Underwater hazards to navigation

B4 CORROSION ISSUES CONTRIBUTING TO THE PROBABILITY OF ACCIDENT OCCURRENCE DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B4.1 • Atmospheric
B4.2 • External
B4.2.A —Bare steel pipe
B4.2.B —Cathodic protection
B4.2.B.1 >Inconsistent regulations
B4.2.B.2 >Test points
B4.2.B.3 >Surveys
B4.2.C —Coating
B4.2.C.1 >Condition
B4.3 • Internal
B4.4 • Tank bottom

B5 OUTSIDE FORCE DAMAGE TO BURIED PIPELINES ISSUES CONTRIBUTING TO THE PROBABILITY OF ACCIDENT OCCURRENCE DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B5.1 • Digging with power mechanical equipment instead of hand digging in close proximity to facilities
B5.2 • Natural forces
B5.3 • Operator personnel
B5.3.A —Pumping stations
B5.4 • Public activity
B5.4.A —Gas distribution facilities
B5.5 • Third party operations
B5.5.A —Mandatory state one-call system
B5.5.B —Universal/uniform one-call system
B5.5.C —Statutory one-call enforcement authority
B5.5.D —Without using available one-call system
B5.5.E —One-call system public education
B5.5.F —While exempt from available one-call systems
B5.5.G —Incorrect operator one-call marks
B5.5.H —Ignoring one-call marks
B5.5.I —One-call marks are altered/removed
B5.5.J —Violation of one-call laws (inadequate penalties/enforcement)
B5.5.K —Incorrect construction marks
B5.5.L —Pipeline markers are inadequate
B5.5.M —Public right-of-way
B5.6 • Unreported or unrecognized damage
B5.7 • Vandalism or sabotage

B6 DESIGN ISSUES CONTRIBUTING TO THE CONSEQUENCES OF ACCIDENTS THAT OCCUR DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B6.1 • Allowable maximum operating pressure
B6.1.A —High risk areas
B6.2 • HVL facilities
B6.3 • Proximity to inhabited buildings
B6.4 • Uncontrolled leaks
B6.4.A —Service lines
B6.5 • Valve remote control
B6.6 • Valve location

B7 CONSTRUCTION ISSUES CONTRIBUTING TO THE CONSEQUENCES OF ACCIDENTS THAT OCCUR DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B7.1 • Environmental damage

B8 OPERATIONS AND MAINTENANCE ISSUES CONTRIBUTING TO THE CONSEQUENCES OF ACCIDENTS THAT OCCUR DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B8.1 • Allowable maximum operating pressure
B8.1.A —High risk areas
B8.2 • Check valve malfunction
B8.3 • Emergency response
B8.3.A —Environmentally sensitive areas
B8.3.A.1 >Definition
B8.3.B —Highly populated areas
B8.3.C —Water supplies
B8.4 • Hazardous concentrations of hydrogen sulfide
B8.5 • HVL facilities
B8.6 • Leaks
B8.6.A —Undetected, in Service lines
B8.6.B —Unrecognized
B8.6.B.1 —During unsteady operations
B8.7 • Protection of pipeline employees

B9 CORROSION ISSUES CONTRIBUTING TO THE CONSEQUENCES OF ACCIDENTS THAT OCCUR DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:

The issues received were not appropriate for this category. The responder may submit issues and solutions for this category.

B10 OUTSIDE FORCE ISSUES CONTRIBUTING TO THE CONSEQUENCES OF ACCIDENTS THAT OCCUR DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:

The issues received were not appropriate for this category. The responder may submit issues and solutions for this category.

B11 ISSUES THAT AFFECT OPS'S AND INDUSTRY'S ABILITY TO IDENTIFY AND MANAGE RISKS DUE TO:

or DUE TO LACK OF:
or DUE TO INADEQUATE:
B11.1 • Accident investigations
B11.1.A —Confidentiality of information
B11.2 • Conflicting responsibilities among conformance authorities
B11.2.A —Interstate pipelines
B11.2.B —Marine transfer pipelines
B11.2.C —Setback requirements
B11.3 • Federal/State
B11.3.A —Accident investigation coordination
B11.3.B —Facility inspection
B11.3.B.1 >frequency
B11.3.B.2 >of master meter systems
B11.3.C —Inspector
B11.3.C.1 >competence
B11.3.C.2 >corrosion control training
B11.3.C.3 >staff size
B11.3.D —Non-uniform regulatory enforcement
B11.4 • Fines and penalties
B11.5 • Incident reporting thresholds
B11.6 • Maps, records and reports
B11.6.A —Analysis
B11.6.B —Annual
B11.6.C —Incident
B11.6.D —High risk areas
B11.7 • Public education
B11.8 • Regulation ambiguities
B11.9 • State highway non-uniformity in design requirements
B11.10 • Unregulated
B11.10.A —Gathering pipelines
B11.10.B —Low stress pipelines
B11.10.C —Underground storage

*Section C. Solution Statement*

A SOLUTION is one of a number of remedies to one or more issues from

Section B listed above. The respondent's proposed solution statement should be complete and specific, but reasonably concise. See examples above in Form for a Solution Statement.

*Section D. Type of Solution*

To aid in consolidating the actions being proposed by each solution statement, select an action or actions for each solution from the listing below:

D1. A new or revised regulation that requires changes in industry design practices

D2. A new or revised regulation that requires changes in industry construction practices

D3. A new or revised regulation that requires changes in industry operational and maintenance practices

D4. A new or revised regulation that requires changes in industry reporting policies

D5. A new or revised OPS enforcement policy concerning and existing regulation

D6. A new or revised OPS audit or inspection practice

D7. A research activity to improve OPS/industry knowledge concerning the causes and effects of pipeline accidents

D8. A research activity to improve OPS/industry knowledge concerning the effects of proposed risk-reduction technologies

D9. Other (Please specify)

*Section E. Type of Facility*

E1 Hazardous liquid gathering pipelines.

E2 Hazardous liquid transportation pipelines.

E3 Two-phase pipelines.

E4 Gas gathering pipelines.

E5 Gas transmission pipelines.

E6 Gas distribution pipelines.

E7 Gas master meter systems.

E8 LPG distribution systems.

E9 LNG facilities.

E10 All liquid pipelines.

E11 All gas pipelines.

E12 All pipelines.

E13 Other (Specify)

**Authority:** 49 U.S.C. § 60101 et seq.; 49 CFR 1.53.

Issued in Washington, DC on February 2, 1995.

**George W. Tenley, Jr.,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 95–3154 Filed 2–7–95; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

**[Dept. Circ. 570, 1994—Rev., Supp. No. 8]**

### Surety Companies Acceptable on Federal Bonds; Millers' Mutual Insurance Association of Illinois

Millers' Mutual Insurance Association of Illinois, an Illinois corporation, has formally changed its name to Millers Mutual Insurance Association, effective September 19, 1994. The Company was last listed as an acceptable surety on Federal bonds at 59 FR 34166, July 1, 1994.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Millers Mutual Insurance Association, Alton, IL. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $3,637,000 established for the Company as of July 1, 1994, remains unchanged until June 30, 1995.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, at page 34166 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (202/FTS) 874–6507.

Dated: February 2, 1995.

**Charles F. Schwan III,**

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 95–3102 Filed 2–7–95; 8:45 am]

BILLING CODE 4810–35–M

## TENNESSEE VALLEY AUTHORITY

### Environmental Impact Statement; Water Supply Development for the Catoosa Utility District and Upper Cumberland Plateau Region of East Tennessee

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice of intent.

**SUMMARY:** This notice is provided in accordance with the National Environmental Policy Act (NEPA) and Rural Utilities Service (RUS) and TVA's implementing procedures. TVA in conjunction with RUS has decided to prepare an Environmental Impact Statement (EIS) on alternatives for water supply development for the Catoosa Utility District and the upper Cumberland Plateau region of East Tennessee. The EIS will consider the potential environmental impacts of alternatives to meet the water supply needs of the district and region over a 30-year planning horizon. Alternatives to be considered will range from the construction of a water supply dam and impoundment on Clear Creek or other water course to the installation of a water pipeline from Watts Bar, Center Hill, or Dale Hollow Reservoirs. The objective of the action is to satisfy the water supply needs in the project area. With this notice, RUS and TVA are inviting comments on the scope of the EIS analysis.

**DATES:** Comments on the scope of the EIS must be received on or before March 10, 1995.

**ADDRESSES:** Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8B, Knoxville, Tennessee 37902.

**FOR FURTHER INFORMATION CONTACT:** Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, phone (615) 632–7183.

**SUPPLEMENTARY INFORMATION:** During the dry time of the year, water supplies are stressed in the Catoosa Water Supply District and other areas of the upper Cumberland Plateau region in East Tennessee. Projected growth for the region indicates a worsening of the situation. Presently, the Catoosa Utility District purchases potable water from the City of Crossville in Crossville, Tennessee, which must first meet the needs of its own customers, especially during drought conditions. In 1992, the Catoosa Utility District requested aid from RUS to develop a reliable and

adequate water supply for its district by constructing a water supply dam and 100 acre impoundment on Clear Creek. Clear Creek is a tributary to the Obed River which, along with part of Clear Creek, was designated a wild and scenic river in 1976 by Public Law 94–486. Engineering and preliminary environmental studies were performed for two alternative dam sites on Clear Creek at approximately river miles 33 and 40.

Based on information gathered during the initial environmental review of the Catoosa proposal, RUS and TVA propose to evaluate alternatives to meet the increasing water supply needs of the upper Cumberland Plateau region rather than limiting the scope of the action to the Catoosa proposal. The agencies decided to prepare an EIS for this action in order to obtain public input on the proposal.

RUS has received funding to address the Catoosa Utility District water supply needs. RUS requested that TVA participate in the preparation of the EIS because of TVA's expertise and experience in regional water supply development and because TVA must approve obstructions or dams along the Tennessee River and its tributaries under Section 26a of the TVA Act.

The first step in the preparation of the EIS will be the determination of the scope of the EIS. It is anticipated that the scope will include construction of a dam on Clear Creek as originally proposed by the Catoosa Utility District, alternative dam sites, and other potential water supply sources including in-stream flows and pipeline sources. Different design concepts will also be addressed. Potentially significant issues for discussion in the EIS include:

1. Effects on stream discharge, water quality, and availability;
2. Impacts on terrestrial and aquatic ecology, including threatened and endangered species;
3. Impacts on floodplains, wetlands, recreation, and existing land use; and
4. Socioeconomic and cultural effects associated with completion of the project and alternatives to it.

This list is not intended to be all inclusive, nor is it intended to be a predetermination of impacts. As scoping and preparation of the EIS proceeds, other issues may be revealed which will necessitate further analyses.

RUS and TVA invite interested persons and agencies to comment on the above suggested scope of the EIS. The agencies also request comments on environmental issues which should not be viewed as significant and which should not be discussed in detail in the EIS.

A public meeting will be held in the project area to receive oral and written comments. Details about this meeting will be announced later in area newspapers and direct mailings. Comments received at this meeting will be accorded the same weight as written comments. The United States Army Corps of Engineers will participate in this EIS process as a cooperating agency. The National Park Service may also become a cooperating agency.

After the scoping process and the initial environmental analysis are completed, RUS and TVA will issue a Draft EIS. A Notice of Availability of the Draft EIS will be published in the **Federal Register** and area newspapers, and public comments will again be solicited. Those persons who choose not to comment on the scope of the document at this time but desire a copy of the Draft EIS should send their names and addresses to Dale V. Wilhelm at the address listed above. RUS and TVA anticipate releasing a final EIS in about 20 months.

Dated: January 24, 1995.

**Kathryn J. Jackson,**

*Senior Vice President, Resource Group, Tennessee Valley Authority.*

[FR Doc. 95–2883 Filed 2–7–95; 8:45 am]

BILLING CODE 8120–01–M

# Sunshine Act Meetings

Federal Register
Vol. 60, No. 26
Wednesday, February 8, 1995

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).

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 9, 1995, from 10 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

*B. Reports*

a. Draft Interim Rule on Supplemental Standards of Ethical Conduct for Employees of the FCA [5 CFR Parts 2634 and 2635, 12 CFR Part 601]

b. Independent Audit Report.

Dated: February 3, 1995.

**Floyd Fithian,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 95–32080 Filed 2–3–95; 5:07 pm]

BILLING CODE 6705–01–P

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 9, 1995 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Tuesday, March 7, 1995 at 11 a.m. An agenda for this meeting will be published at a later date.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: February 3, 1995.

**Floyd Fithian,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 95–3207 Filed 2–3–95; 5:07 pm]

BILLING CODE 6705–01–P

## FEDERAL MARITIME COMMISSION

**TIME AND DATE** 2 p.m.—February 9, 1995.

**PLACE:** Room 100 (Hearing Room)—800 North Capital St., NW., Washington, DC 20573–001.

**STATUS:** Closed.

**MATTER(S) TO BE CONSIDERED:**

1. Trans-Atlantic Conference Agreement Proceedings (Fact Finding Investigation No. 21, Dockets No. 94–28, 94–29 and 94–30)—Consideration of Proposed Settlement.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95–3296 Filed 2–6–95; 3:09 pm]

BILLING CODE 6730–01–M

## LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

### AD Hoc Structure Committee on Governance

**TIME AND DATE:** The Legal Services Corporation Board of Directors Ad Hoc Structure Committee on Governance will meet on February 16, 1995. The meeting will commence at 5:00 p.m.

**PLACE:** The Legal Service Corporation, 750 1st Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

**OPEN SESSION:**

1. Approval of Agenda.
2. Consider and Act on Any Suggested Changes for Board Governance and Committee Structure.
3. Consider and Act on 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.

Dated: February 3, 1995.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 95–3205 Filed 2–3–95; 4:46 pm]

BILLING CODE 7050–01–M

## LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

### Operations and Regulations Committee Meeting

**TIME AND DATE:** The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on February 17–18, 1995.[1] The meeting will commence at 9:00 a.m. on both days.

**PLACE:** Legal Services Corporation, 750 1st Street, NE., The Board Room, Washington, DC 20002, (202) 336–8800.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

**OPEN SESSION:**

1. Approval of Agenda.
2. Approval of Minutes of January 27–28, 1995 Meetings.
3. Consider and Act on Proposed Changes to the Corporation's Bylaws.
4. Consider and Act on Comments on Proposed Changes to Part 1608 of the Corporation's Regulations.
5. Consider and Act on Comments on Proposed Changes to Part 1609 of the Corporation's Regulations.
6. Consider and Act on Comments on Proposed Changes to Part 1610 of the Corporation's Regulations.
7. Consider and Act on Other Business.

**CONTACT PERSON FOR INFORMATION:** Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to

[1] It is possible the Committee will conclude its deliberations on February 17, 1995. However, should this not occur, the Committee will reconvene at the time and place indicated in this notice on February 18, 1995.

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.

Dated: February 3, 1995.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 95–3204 Filed 2–3–95; 4:46 pm]

**BILLING CODE 7050–01–M**

# Corrections

**Federal Register**

Vol. 60, No. 26

Wednesday, February 8, 1995

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.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

### National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)

*Correction*

In rule document 94–30402 beginning on page 64303 in the issue of Wednesday, December 14, 1994, make the following correction:

**§ 63.425 [Corrected]**

1. On page 64321, in the third column, in § 63.425(g)(3), in the seventh line, ''(PF)'' should read ''($P_F$)''.

2. On the same page, in the third column, in the same section and paragraph, the equation should read

$$P_F = \left(\frac{N}{18.0}\right)^{\frac{V_s}{5 \times V_h}}$$

3. In the same paragraph, following the word ''where:'' ''$P_f$'' should correctly read ''($P_F$)''.

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 173

RIN 2137-AC42

### Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

*Correction*

In document 94–31175 beginning on page 67390 in the issue of Thursday, December 29, 1994, make the following corrections:

**§ 173.28 [Corrected]**

On page 67491, in the third column, in § 173.28(b)(4), in the table:

a. In the first column, the heading ''Minimum thickness of packaging material'' should read ''Maximum capacity not over''.

b. In the second column, the heading ''Maximum capacity not over'' should read ''Minimum thickness of packaging material''.

BILLING CODE 1505–01–D

federal register

Wednesday
February 8, 1995

# Part II

# Department of Health and Human Services

## National Institutes of Health

## Recombinant DNA Research; Proposed Actions Under the Guidelines; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Recombinant DNA Research: Proposed Actions Under the Guidelines

**AGENCY:** National Institutes of Health (NIH), PHS, DHHS.

**ACTION:** Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496).

**SUMMARY:** This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on March 6–7, 1995. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

**DATES:** Comments received by February 27, 1995, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its March 6–7, 1995, meeting.

**ADDRESSES:** Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone 301–496–9838, FAX to 301–496–9839.

**SUPPLEMENTARY INFORMATION:** The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

#### I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Curiel and Alvarez

In a letter dated January 5, 1995, Drs. David T. Curiel and Ronald D. Alvarez of the University of Alabama, Birmingham, Alabama, submitted a human gene transfer protocol entitled: A Phase I Study of Recombinant Adenovirus Vector-Mediated Delivery of an Anti-erbB–2 Single-Chain (sFv) Antibody Gene for Previously Treated Ovarian and Extraovarian Cancer Patients to the Recombinant DNA Advisory Committee for formal review and approval.

#### II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Malech

In a letter dated January 6, 1995, Dr. Harry L. Malech of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol entitled: Gene Therapy Approach for Chronic Granulomatous Disease to the Recombinant DNA Advisory Committee for formal review and approval.

#### III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Black and Fakhrai

In a letter dated January 6, 1995, Drs. Keith L. Black and Habib Fakhrai of the University of California, Los Angeles, California, submitted a human gene transfer protocol entitled: Immunization of Glioblastoma Patients with TGF–β2 Antisense and Interleukin-2 (IL–2) Gene Modified Autologous Tumor Cells: A Phase I Study to the Recombinant DNA Advisory Committee for formal review and approval.

#### IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Gansbacher

In a letter dated January 6, 1995, Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, submitted a human gene transfer protocol entitled: Phase I/II Study of Immunization with MHC Class I Matched Allogeneic Human Prostatic Carcinoma Cells Engineered to Secrete Interleukin-2 and Interferon-γ to the Recombinant DNA Advisory Committee for formal review and approval.

#### V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Link and Moorman

In a letter dated January 6, 1995, Drs. Charles J. Link and Donald Moorman of the Human Gene Therapy Research Institute, Des Moines, Iowa, submitted a human gene transfer protocol entitled: A Phase I Trial of In Vivo Gene Therapy with the Herpes Simplex Thymidine Kinase/Ganciclovir System for the Treatment of Refractory or Recurrent Ovarian Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

#### VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Morgan and Walker

In a letter dated January 9, 1995, Drs. Richard Morgan and Robert Walker of the National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol entitled: Gene Therapy for AIDS Using Retroviral Mediated Gene Transfer to Deliver HIV–1 Antisense TAR and Transdominant Rev Protein Genes to Syngeneic Lymphocytes in HIV Infected Identical Twins to the Recombinant DNA Advisory Committee for formal review and approval.

#### VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Economou, Glaspy, and McBride

In a letter dated April 11, 1994, Drs. James Economou, John Glaspy, and William McBride of the University of California, Los Angeles, California, submitted a human gene transfer protocol entitled: A Phase I Testing of Genetically Engineered Interleukin-7 Melanoma Vaccines to the Recombinant DNA Advisory Committee for formal review and approval. At its June 9–10, 1994, meeting, the Recombinant DNA Advisory Committee deferred the protocol based on insufficient toxicology studies and failure to demonstrate biological efficacy. The Recombinant DNA Committee required a new submission for future review of the full Recombinant DNA Advisory Committee, not just the toxicology data.

In a letter dated January 17, 1995, Drs. James S. Economou, John A. Glaspy, and William H. McBride submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval at its March 6–7, 1995, meeting.

#### VIII. Proposed Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/Fleming

In a letter dated June 24, 1993, Dr. Diane Fleming, President of the Mid-Atlantic Biological Safety Association requested updating Appendix B, Classification of Microorganisms on the Basis of Hazard. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the Committee to review which included the latest taxonomy and agent risk group classifications as defined by the Centers

for Disease Control and Prevention. This request was published for public comment in the **Federal Register** (August 18, 1994, 58 FR 44098).

During the September 9–10, 1993, meeting, the Recombinant DNA Advisory Committee recommended by consensus that the current classification of etiological agents described in the Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, May 1993, U.S. Department of Health and Human Services, should be endorsed by the Committee. The Committee retains the option to adopt any modification to the CDC listing. The Committee recommended that the revised Appendix B, Classification of Microorganisms on the Basis of Hazard, submitted by Dr. Fleming should not be adopted until the Committee receives letters of concurrence from both the Centers for Disease Control and Prevention and the NIH Division of Safety.

In a telephone call on October 20, 1994, Dr. Fleming stated that Appendix B, Classification of Microorganisms on the Basis of Hazard, would be reviewed by experts from the Centers for Disease Control and Prevention and the American Society for Microbiology. The revised Appendix B was submitted to the Recombinant DNA Advisory Committee December 1–2, 1994, meeting for review and discussion. During the December 1994 meeting, the Committee recommended publishing the revised Appendix B in the **Federal Register** for public comment, with further review of this proposal and possible approval during the March 6–7, 1995, meeting.

The proposed Appendix B reads as follows:

## Appendix B. Classification of Etiologic Agents and Oncogenic Viruses on the Basis of Risk (See Appendix B–VI–A)

Agents evaluated by the Centers for Disease Control (CDC) and the National Institutes of Health (NIH) and published in the Morbidity and Mortality Weekly Report, or in a revision of the CDC/NIH ''Biosafety in Microbiological and Biomedical Research Laboratories'' (BMBL), as agent summary statements shall automatically be added to this list. Revisions to lists of agents provided by the Subcommittee on Arbovirus Laboratory Safety (SALS) as taken from the BMBL (see Appendix B–VI–D) and provided here in Tables 3–6 shall be incorporated into this list. Appendix B shall undergo an annual review for the Office of Recombinant DNA Activities (ORDA) by a special committee of the American Society for Microbiology (ASM) to ensure that all such updates have been incorporated. Additions or corrections to this list may also occur following a review by ORDA, the RAC, and/or by recommendation of the CDC.

### *Appendix B–I. Points To Consider in Using Appendix B and in Assessing the Risk of Handling Microorganisms*

Appendix B is not to be used to replace a thorough assessment of the risk of working with a particular biohazardous agent. However, the information can be used to establish an initial, qualitative assessment of the risk of handling an agent. Such information would be appropriate for initial estimates of the design of facilities needed for the use of such agents or the requirements for their transport. Much of the information in the previous version of Appendix B, based upon a 1974 publication of the Centers for Disease Control (see Appendix B–VI–C), is updated and retained in this revision. Information on agent risk assessments found in the ''Agent Summary Statements'' of the CDC/NIH publication ''Biosafety in Microbiological and Biomedical Laboratories'' (See Appendix B–VI–D), information from the American Public Health Association publication, ''Control of Communicable Diseases of Man'' (See Appendix B–VI–B) and input from a special committee of the American Society for Microbiology provided additional information for the revised list of four risk groups found in Appendix B. The definition of each risk group and the relationship of the four risk groups to four biosafety levels (BL) is found in Tables 1 and 2 from the Laboratory Biosafety Manual of the World Health Organization (See Appendix B–VI–E). As a general principle, the greater the hazard posed by the microorganism, the higher the risk group placement. Use of the term ''risk group'' is recommended by the World Health Organization and is used here to indicate the result of a qualitative risk assessment based upon agent characteristics as described below. Risk Group designations are currently used in Canada for human and animal pathogens, and in the member nations of the European Union, which list only human pathogens in the Directive for protection of workers from exposure to biohazardous agents.

Specific strains of many species may fall into either a more or a less hazardous risk group depending upon the genetic background and natural history of the strain. Information on the parent or wild-type strain is used for the qualitative risk assessment list in Appendix B. Further information on a specific strain is to be used by the Principal Investigator or supervisor for a quantitative risk assessment.

In assessing the risk of working with a specific strain, the following criteria should be considered: any organism directly isolated from a human or animal should be treated as a potentially pathogenic organism until proven otherwise; specific strains that are known to be more hazardous than the parent strain, such as those resistant to a limited number of drugs used for treatment, may need to be handled at a higher containment level than the parent strain. On the other hand, specific strains of Risk Group 2 microorganisms that are known to have minimal hazard risk to humans may be classified within Risk Group 1 and handled at BL1. Certain attenuated strains that are commonly used for live vaccines and specific attenuated strains with an extensive history of safe laboratory use without harmful effect may be placed in a lower risk group than the parent organism, as done by the CDC (See Appendices B–VI–C through –D). Where a strain is attenuated or has lost known virulence factors (i.e., genes) and is to be used as a product or part of a product or for prophylactic/therapeutic purposes, then the containment required by the classification of the parent strain need not apply when used for such purpose.

Appendix B–I–A. The list of biohazardous agents in Appendix B is meant to be based on the effect of a biological agent on a healthy worker. No account is taken of particular effects on those whose susceptibility may be affected by one or other reasons such as preexisting disease, medication, compromised immunity, pregnancy or breast feeding. Additional risk to workers should be considered as a part of the required (quantitative) risk assessment which takes into account the potential interactions of the agent-host-activity. Only agents known to infect humans are meant to be included in Appendix B. Lists of restricted animal pathogens, included in BMBL and previously included in Appendix B, should be obtained by contacting the USDA, Animal and Plant Health Inspection Service (APHIS).

Appendix B–I–B. Genetically modified organisms are not specifically covered by this list. The determination of the risk of a recombinant organism is a part of the required quantitative risk assessment of the specific strain to be carried out by the Principal Investigator/supervisor.

Appendix B–I–C. For agents where more than one species is known to be pathogenic for man, this appendix may include the genus name as well as

individual species which are known to be the most important in terms of human infectivity. When such a genus is listed in Appendix B, the species and strains known to be non-pathogenic are meant to be excluded from the list. For parasites, the stages of the life cycle which are not infectious for humans are excluded.

Appendix B–I–D. Those agents not listed in Risk Groups 2–4 are not automatically or implicitly classified in Risk Group 1; a risk assessment must be conducted. The list in Appendix B is meant to serve as a general guideline for the risk group classification of microorganisms. Further guidance for microorganisms which are not specifically listed may be obtained from the Centers for Disease Control and Prevention, Office of Health and Safety (404–329–3883).

Appendix B–I–E. The list provided in Appendix B reflects the state of knowledge at the time it was prepared. The nomenclature reflects and is meant to be in conformity with the latest international agreements on taxonomy and nomenclature of agents at this time. The list is as complete as possible but necessarily not exhaustive. Additional information to be used to update the list in a timely manner shall include new agent summary statements published by the Centers for Disease Control as well as taxonomic changes to human pathogens. An annual review to incorporate the new agents and to correct the taxonomy has been offered through the ASM.

*Appendix B–II. Risk Assessment*

Appendix B–II–A. It is the responsibility of the Principal Investigator/supervisor to assess the risk associated with the handling of potentially biohazardous microorganisms and to ensure that the appropriate biosafety practices are employed prior to conducting any experiments or operations. A rough, qualitative risk assessment is used for an initial agent classification. However, it is to be followed by a quantitative risk assessment of the specific strain of the agent, the immune status of the host relative to the agent in question and potential agent-host-activity interactions, such as those caused by aerosol production. For example, although cultures of the organism may be handled at BSL–2 for Risk Group 2 agents such as the dengue virus, when used for animal inoculation or transmission work it is handled at BSL–3. Similarly, such work with monkey pox, VEE or yellow fever viruses are carried out under BSL–4 containment.

Appendix B–II–B. The quantitative risk assessment described above is to be used to determine the Biosafety Level (BL), as described in Appendices G and K, which identifies the appropriate facilities, equipment, and work practices to be used for specific procedures carried out by a healthy adult individual (assessed for health status) with a specific biohazardous agent (assessed for virulence factors including antibiotic resistance to drugs of treatment). Factors to be considered in determining the level of containment include agent factors such as: Virulence, pathogenicity, stability, route of spread, communicability, the operation(s), quantity, and availability of vaccine or treatment. The higher risk agents also require more stringent biosafety practices and facilities as reflected in the Biosafety Level to which work is to be assigned (See Table 2 for the relation between risk groups and biosafety level). Although risk assessment is ultimately a subjective process, the CDC/NIH Guidelines in BMBL (See Appendix B–VI–D) have provided information about microorganisms based on the hazard they present and guidance for defining safe conditions for their use. Further information on specific biohazardous microorganisms is available in the Agent Summary Statements of the primary reference (See Appendix B–VI–D), from a publication of the American Public Health Association ''Control of Communicable Diseases in Man'' (See Appendix B–VI–B) and from the CDC, e.g., the Office of Safety and Health and the Special Pathogens Branch. Changes to the agent which enhance or remove virulence factors should be considered by the Principal Investigator/supervisor and/or a local Institutional Biosafety Committee (IBC) which has the authority to raise or lower the containment level used for that agent. Published regulations or guidelines from Federal, State or local governments must also be taken into account.

Appendix B–II–C. When laboratory work is conducted with biological agents for which epidemiology and etiology are unknown or incompletely understood, it will be presumed that the work presents a biohazard similar to related agents until further information can be provided. This method was used by the Subcommittee on Arbovirus Laboratory Safety in assessing the risk of work with arboviruses for which risk information is inadequate or unavailable (See Table C of Appendix B). It is assumed that information needed for risk evaluation will be obtained prior to the large-scale use of such an agent.

Appendix B–II–D. Special consideration will be given to large-scale (greater than 10 liters of culture) and aerosol producing operations which may pose additional significant risks and thus may require additional containment (See Appendix K).

*Appendix B–III. Risk Groups: Classification of Infectious Substances and Oncogenic Viruses on the Basis of Risk*

The characteristics used for the qualitative risk assessment of biohazardous agents into the four Risk Groups of human etiologic agents are defined in Table 1 below, with each higher number representing an increased hazard. The information and interpretations below are from the CDC/NIH, BMBL (See Appendix B–VI–D) and the World Health Organization Laboratory Biosafety Manual (See Appendix B–VI–E).

TABLE 1.—CLASSIFICATION OF BIOHAZARDOUS AGENTS BY RISK GROUP (SEE APPENDIX B–VI–E)

| | |
|---|---|
| Risk Group 1 .... | (No or very low individual and community risk) An agent that is unlikely to cause human disease. Well characterized agents not known to cause disease in healthy adult humans and of minimal potential hazard to laboratory personnel and the environment. |
| Risk Group 2 .... | (Moderate individual risk, low community risk) Agents which can cause human disease but are unlikely to be a serious hazard to workers, the community or the environment; laboratory exposures may cause serious infection but effective treatment and preventive measures are available and the risk of spread of infection is limited. |
| Risk Group 3 .... | (High individual risk, low community risk) Agents which usually cause serious human disease but do not ordinarily spread from one infected individual to another. Effective treatment or preventive measures are available. |
| Risk Group 4 .... | (High individual and high community risk) Agents which can cause serious human disease and can be readily transmitted from one individual to another, directly or indirectly. Effective treatment and preventive measures are not usually available. |

TABLE 2.—RELATIONSHIP OF RISK GROUPS TO BIOSAFETY LEVELS, PRACTICES, AND EQUIPMENT (SEE APPENDIX B–VI–E)

| Risk group | Biosafety level | Examples of laboratories | Laboratory practices | Safety equipment |
|---|---|---|---|---|
| 1 | Basic Biosafety Level 1 | Basic Teaching | GMT [a] | None, open bench work |
| 2 | Basic Biosafety Level 2 | Primary health svcs; primary level hospital; diagnostic, teaching and Public Health. | GMT plus protective clothing; biosafety sign. | Open bench plus BSC [b] for potential aerosols. |
| 3 | Containment-Biosafety Level 3 | Special diagnostic | As level 2 plus special clothing, controlled access, directional air flow. | BSC and/or other primary containment for all activities. |
| 4 | Maximum Containment-Biosafety Level 4 | Dangerous pathogens units | As level 3 plus airlock entry, shower exit, special waste disposal. | Class III BSC or positive pressure suits, double-ended autoclave filtered air. |

[a] GMT—good microbiological practices.
[b] BSC—biological safety cabinet.

Appendix B–III–A. Risk Group 1—Agents

Risk Group 1 agents are usually not placed on a list but are assumed to include all bacterial, fungal, viral, rickettsial, chlamydial, and parasitic agents which have been assessed for hazard and are not included in higher risk groups. Risk Group 1 agents can be used for undergraduate and secondary educational training and teaching laboratories and for other facilities in which work is conducted with defined and characterized strains of viable microorganisms not known to cause disease in healthy adult humans and of minimal potential hazard to personnel and the environment under ordinary conditions of use. These agents can be handled safely in the laboratory without special apparatus or equipment using techniques generally acceptable for nonpathogenic materials. Examples of agents in Risk Group 1 are: *Bacillus subtilis,* infectious canine hepatitis viruses; influenza reference strains A/PR/8/34, A/WS/33; agents listed in Appendix C–II of the NIH *Guidelines for Research Involving Recombinant DNA Molecules* (*Escherichia coli* K12, *Saccharomyces cerevisiae,* etc.); vectors such as Baculovirus. It is not appropriate to assume that an unassessed agent belongs in this risk group. Even vaccine strains which have undergone multiple *in vivo* passages would not be considered avirulent based only on the fact that they are vaccine strains.

Appendix B–III–A–1. Risk Group 1—Low-Risk Oncogenic Viruses (See Appendix B–VI–G)

Adenovirus7–Simian virus 40 (Ad7–SV40)
Avian leukosis virus
Bovine leukemia virus
Bovine papilloma virus
Chick-embryo-lethal orphan (CELO) virus or fowl adenovirus–1
Dog sarcoma virus
Guinea pig herpes virus
Lucke (Frog) virus
Hamster leukemia virus
Marek's disease virus
Mason-Pfizer monkey virus
Mouse mammary tumor virus
Murine leukemia virus
Murine sarcoma virus
Polyoma virus
Rat leukemia virus
Rous sarcoma virus
Shope fibroma virus
Shope papilloma virus
Simian virus 40 (SV–40)

Appendix B–III–B. Risk Group II—Agents

Agents of moderate potential hazard to healthy human adults and the environment. Such agents may produce disease of varying degrees of severity from accidental inoculation, injection or other means of cutaneous penetration but can usually be adequately and safely contained by ordinary laboratory techniques. Some agents may cause disease by contact or respiratory routes, but they are self-limiting and do not cause a serious illness, e.g. the common cold (rhinoviruses). Risk Group 2 agents are recommended for use only in those laboratories where staff are trained to handle microbes which pose this level of risk. Examples include *Streptococcus pneumonia, Staphylococcus aureus,* poliovirus, etc.

Appendix B–III–B–1. Risk Group 2—Bacteria [1]

*Acinetobacter baumannii*
*Actinobacillus spp.*
*Actinomyces pyogenes*
*Aeromonas hydrophila*
*Amycolata autotrophica*
*Archanobacterium haemolyticum*
*Arizona hinshawii*—all serotypes
*Bacillus anthracis** [2]
*Bartonella henselae, B. quintana, B. vinsonii*
*Bordetella spp.* including *B. pertussis**
*Borrelia recurrentis, B. burgdorferi*
*Burkholderia* was *Pasteurella spp.* (except for those listed in Risk Group 3)
*Burkholderia pseudomallei**
*Campylobacter coli, C. fetus ssp. fetus, C. jejuni*
*Chlamydia psittaci*, C. trachomatis*, C. pneumoniae**
*Clostridium botulinum*, Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani*
*Corynebacterium diphtheriae, C. pseudotuberculosis, C. renale*
*Dermatophilus congolensis*
*Edwardsiella tarda*
*Erysipelothrix rhusiopathiae*
*Escherichia coli*—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen, including *E. coli* O157:H7
*Haemophilus ducreyi, H. influenzae*
*Helicobacter pylori*
*Klebsiella spp.*
*Legionella spp.* including *L. pneumophila**
*Legionella-like organisms*
*Leptospira interrogans*—all serotypes
*Listeria spp.*
*Moraxella spp.*
*Mycobacterium spp.* (except those listed in Risk Group 3) including *M. avium* complex, *M. asiaticum, M. chelonei, M. fortuitum, M. kansasii, M. leprae, M. malmoense, M. marinum, M. paratuberculosis, M. scrofulaceum, M. simiae, M. szulgai, M. ulcerans, M. xenopi*

[1] When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are meant to be included in this list.

[2] *Agents in Risk Group 2 which require special handling using BL 3 practices are noted with an asterisk.

*Mycoplasma spp.* except *M. mycoides* and *M. agalactiae* which are restricted animal pathogens (See Appendix B–V)
*Neisseria gonorrhoea,* N. meningitidis**
*Nocardia asteroides, N. brasiliensis, N. otitidiscaviarum, N. transvalensis*
*Rhodococcus equi*
*Salmonella spp.* and serotypes including *S. arizonae, S. cholerasuis, S. enteritidis, S. gallinarum-pullorum, S. meleagridis, S. paratyphi,* A, B, C, *S. typhi*, S. typhimurium,*
*Shigella spp.** and serotypes including *S. boydii, S. dysenteriae,* Type 1, *S. flexneri, S. sonnei*
*Sphaerophorus necrophorus*
*Staphylococcus aureus*
*Streptobacillus moniliformis*
*Streptococcus spp.* including *Streptococcus pneumoniae, S. pyogenes*
*Treponema pallidum, T. carateum*
*Vibrio cholerae, V. parahemolyticus, V. vulnificus*
*Yersinia enterocolitica, Y. pestis**

Appendix B–III–B–2. Risk Group 2—Fungal Agents [3]

*Blastomyces dermatitidis*
*Cladosporium bantianum, C. (Xylohypha) trichoides*
*Cryptococcus neoformans* [4]
*Dactylaria galopava (Ochroconis gallopavum)*
*Epidermophyton spp.*
*Exophiala (Wangiella) dermatitidis*
*Fonsecaea pedrosoi*
*Microsporum spp.*
*Paracoccidioides braziliensis*
*Penicillium marneffei*
*Sporothrix schenckii*
*Trichophyton spp.*

Appendix B–III–B–3. Risk Group 2—Parasitic Agents

*Ancylostoma spp.,* human hookworms including *A. duodenale, A. ceylanicum*
*Ascaris spp.* including *Ascaris lumbricoides suum*
*Babesia spp.* including *B. divergens, B. microti*
*Brugia spp.* filaria worms including *B. malayi, B. timori*
*Coccidia spp.*
*Cryptosporidium spp.* including *C. parvum*
*Cysticercus cellulosae* (hydatid cyst, larva of *T. solium*)
*Echinococcus spp.* including *E. granulosis, E. multilocularis, E. vogeli*
*Entamoeba histolytica*
*Enterobius spp.*
*Fasciola spp.* including *F. gigantica, F. hepatica*
*Giardia spp.* including *G. lamblia*
*Heterophyes spp.*
*Hymenolepis spp.* including *H. diminuta, H. nana*
*Isospora spp.*
*Leishmania spp.* including *L. braziliensis, L. donovani, L. ethiopia, L. major, L. mexicana, L. peruvania, L. tropica*
*Loa loa* filaria
*Microsporidium spp.*
*Naegleria fowleri*
*Necator spp.* human hookworm, including *N. americanus*
*Onchoerca spp.* filaria including, *O. volvulus*
*Plasmodium spp.* including simian species, *P. cynomologi, P. falciparum, P. malariae, P. ovale, P.vivax*
*Sarcocystis spp.* including *S. sui hominis*
*Schistosoma spp.* including *S. haematobium, S. intercalatum, S. japonicum, S. mansoni, S. mekongi*
*Strongyloides spp.* including *S. stercoralis*
*Taenia solium*
*Toxocara spp.* including *T. canis*
*Toxoplasma spp.* including *T. gondii*
*Trichinella spiralis*
*Trypanosoma spp.* including *T. brucei brucei, T. brucei gambiense, T. brucei rhodesiense, T. cruzi*
*Wuchereria bancrofti* (filaria)

Appendix B–III–B–4. Risk Group 2—Viruses and prions (See Tables 3 and 4)

Adenoviruses-human, all types
Arboviruses (See Table 3)
Arenaviruses (See Table 3)
Bunyamwera virus
Coronaviruses
Coxsackie A and B viruses
Creutzfeldt-Jacob disease agent (prion)
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Encephalomyelitis viruses [5]* (See Table 3)
Hepatitis A, B*, C*, D, E viruses
Herpesviruses* including Cytomegalovirus, Epstein Barr, Herpes simplex types 1 and 2 and Herpes zoster, except Herpesvirus simiae (Monkey B virus) which is in Risk Group 4
Human Immunodeficiency Virus (HIV) all serotypes
Human T-cell lymphotropic viruses* (HTLV) types 1 and 2.
Influenza viruses
Kuru (prion)
Lymphocytic choriomeningitis virus* (except neurotropic strains)
Lymphogranuloma venereum agent
Measles virus
Molluscum contagiosum virus
Mumps virus
Orf virus
Papovaviridae including human papilloma viruses
Parainfluenza virus
Paravaccinia virus
Polioviruses—all types, wild and attenuated
Poxviruses [6]—all types such as Cowpox**, Monkeypox** or Vaccinia**, Camelpox, Milker's node virus, Molluscum contagiosum virus, Orf, Rabbitpox, Tanapox and Yabapox, with the exception of Alastrim, Smallpox, and Whitepox (See Appendix B VI–H)
Rabies virus [7]—all strains, including fixed/attenuated virus, except Rabies street virus
Reoviruses all types
Respiratory syncytial virus
Rhinoviruses all types
Rubella virus
Simian viruses all types including simian immunodeficiency virus*, except
Herpesvirus simiae (Monkey B virus) and Marburg virus which are in Risk Group 4
Transmissible Spongioform Encephalopathies (TME)-prions (Creutzfieldt-Jacob; Kuru)
Vesicular Stomatitis Virus, lab adapted strains:VSV-Indiana, San Juan and Glasgow

Appendix B–III–B–5. Risk Group 2—Moderate Risk Oncogenic Viruses (See Appendix B–VI–G)

Adenovirus
Adenovirus 2—Simian virus 40 (Ad2–SV40)
Epstein-Barr virus (EBV)
Feline leukemia virus (FeLV)
Feline sarcoma virus (FeSV)
Gibbon leukemia virus (GaLV)
Herpesvirus (HV) ateles
Herpesvirus (HV) saimiri
Papovaviridae including human papilloma viruses
Simian sarcoma virus (SSV)–1
Yabapox virus

Appendix B–III–C. Risk Group 3—Agents

Indigenous or exotic agents which may cause serious or potentially lethal disease as a result of exposure by the inhalation route. Agents involving special hazards to laboratory personnel or agents derived from outside the

[3] When ''spp'' follows the name of a genus, or ''serotype'' follows a species, only those species or serotypes known to be pathogenic to healthy human adults are to be included in this list.

[4] Risk Group 2 agent for which droplets/aerosols are handled in a Biological Safety Cabinet (BSC).

[5] *Risk Group 2 Viruses for which droplets/aerosols are handled with BL 3 practices.

[6] All types with double asterisk can be handled at BL2 in a BSC by immunized personnel.

[7] Rabies virus may be handled at BL 2 by immunized personnel using a BSC.

United States which require a permit for importation, unless they are specified for higher classification.

This risk group includes pathogens which require special conditions for containment. Agents in this group can be used in laboratories where staffs have levels of competency equal to or greater than one would expect in a college department of microbiology, and who have had special training in handling these or similar pathogens which cause potentially lethal disease. Workers are to be supervised by competent scientists trained and experienced in handling these biohazardous agents/materials. Examples include: *Brucella melitensis, Coxiella burnetii, Mycobacterium tuberculosis, Rickettsia rickettsii, etc.*

Appendix B–III–C–1. Risk Group 3—Bacterial Agents, including Chlamydia and Rickettsia

*Bartonella spp.*
*Brucella spp. including B. abortus, B. canis, B. melitensis* (USDA restricted), *B. suis*
*Burkholderia (Pseudomonas) mallei, B. pseudomallei* (see Appendix B–VI–F)
*Coxiella burnetii*
*Francisella tularensis*
*Mycobacterium bovis, M. tuberculosis*
*Pasteurella multocida* type B—''buffalo'' and others (see Appendix B–VI–F)
*Rickettsia akari, R. australis, R. canada, R. conorii, R. prowazekii*
*R. rickettsii, R, siberica, R. tsutsugamushi, R. typhi (R. mooseri)*
*Yersinia pestis* (antibiotic resistant strains)

Appendix B–III–C–2. Risk Group 3—Fungal Agents

*Coccidioides immitis* (sporulating cultures; contaminated soil)
*Histoplasma capsulatum, H. capsulatum var. duboisii*

Appendix B–III–C–3. Risk Group 3—Parasitic Agents

None

Appendix B–III–C–4. Risk Group 3—Viral Agents

Arboviruses[8] and certain other viruses assigned to Risk Group 3 (see Appendix B–VI–I and Tables 5 and 6).
Lymphocytic choriomeningitis virus (LCM) (neurotrophic strains)
Monkey pox virus—when used *in vitro* (see Appendix B–VI–H)
Rabies Street virus

[8] The 171 arboviruses in Risk Group 3 are found in Appendix B–VI–I and Tables 5 and 6. Arboviruses indigenous to the United States are in Risk Group 3 except those listed in Risk Group 2 (Tables 3 and 4). West Nile and Semliki Forest viruses may be classified up or down depending on the conditions of use and geographical location of the laboratory.

Appendix B–III–D. Risk Group 4—Agents

Dangerous and exotic agents which pose a high individual risk of aerosol transmitted laboratory infections which result in a life-threatening disease, or related agents with unknown means of transmission. These agents require the most stringent conditions for their containment because they are extremely hazardous to laboratory personnel or may cause serious epidemic disease. These agents may only be used in special facilities where the staff has a level of competency equal to or greater than one would expect in a college department of microbiology, and who have had specific and thorough training in handling dangerous pathogens, including the specific techniques to be used. Such workers are to be supervised by competent scientists.

Appendix B–III–D–1. Risk Group 4—Bacterial Agents

None

Appendix B–III–D–2. Risk Group 4—Fungal Agents

None

Appendix B–III–D–3. Risk Group 4—Parasitic Agents

None

Appendix B–III–D–4. Risk Group 4—Viral Agents

Absettarov
Central European encephalitis viruses
Crimean hemorrhagic fever (Congo)
Ebola fever virus
Guanarito
Hanzalova
Hemorrhagic fever agents and viruses as yet undefined
*Herpesvirus simiae* (Monkey B virus)
Hypr
Junin (BL3* if vaccine is used)
Kumlinge
Kyasanur forest disease
Lassa
Machupo
Marburg
Omsk hemorrhagic fever
Russian spring-summer encephalitis
Tick-borne orthomyxoviridae, Dhori & Thogoto

*Appendix B–IV. Restricted Plant Pathogens*

Non-indigenous pathogens of plants may require special laboratory design, operation and containment features not generally addressed in the CDC/NIH guidelines. Information on the importation, possession or use of these agents is to be obtained from the USDA, APHIS. Guidelines for handling recombinant plants are in Appendix P.

*Appendix B–V. Restricted Animal Pathogens*

Non-indigenous pathogens of domestic livestock and poultry may require special laboratory design, operation, and containment features not generally addressed in the CDC/NIH guidelines. The importation, possession or use of these agents is prohibited or restricted by law or by the U.S. Department of Agriculture regulations or administration policies. Animal pathogens other than those listed as zoonotic agents Appendix B may also be subject to USDA regulations. See Appendix Q for guidelines for recombinant animals.

Appendix B–V–A. Organisms which may not be studied in the United States except at Specified Facilities

Alastrim (see Appendix B–VI–H)

Small pox (see Appendix B–VI–H)

White pox (see Appendix B–VI–H)

*Appendix B–VI. References of Appendix B*

Appendix B–VI–A. For the purposes of these Guidelines, the list in Appendix B has been revised by using the Risk Group classification recommended by the World Health Organization (See Appendix B–VI–E), and adding information from agent summary statements of the CDC/NIH ''Biosafety in Microbiological and Biomedical Laboratories'' (See Appendix B–VI–D), from the APHA, ''Control of Communicable Diseases of Man'' (See Appendix B–VI–B), and from a special committee of the American Society for Microbiology. Information in Tables 1 and 2 came from the WHO reference (See Appendix B–VI–E) while that for Tables 3–6 and for Appendix B–V and B–VI was obtained directly from the CDC on computer disc. The original reference for this classification was the publication Classification of Etiologic Agents on the Basis of Hazard, 4th edition, July 1974 (See Appendix B–VI–C). A draft 1982 CDC document which included a more complete risk assessment of a larger group of human pathogens was also used (Dr. R. Knudsen, CDC, personal communication). For the purposes of these NIH *Guidelines*, these lists are revised by the NIH.

Appendix B–VI–B. Benenson, Abram S. ed. 1990. Control of Communicable Diseases in Man. 15th edition. 532 pp. American Public Health Asso. Washington, D.C.

Appendix B–VI–C. Center for Disease Control, Office of Biosafety. 1974. Classification of Etiologic Agents on the Basis of Hazard, 4th Edition. U.S. Department of Health, Education and Welfare, Public Health Service.

Appendix B–VI–D. Centers for Disease Control and the National Institutes of Health (CDC/NIH), 1993. Biosafety in Microbiological and Biomedical Research Laboratories. pp 177. Government Printing Office. (#017–040–00523–7) Washington, D.C.

Appendix B–VI–E. World Health Organization Laboratory Biosafety Manual. 2nd Edition. WHO Albany, NY ORDER FROM: WHO Publication Centre, USA, (Q Corp) 49 Sheridan Avenue, Albany, NY 12210, tel 518–436–9686. Order # 1152213 (cost $23.40 plus $3.00 handling).

Appendix B–VI–F. A U.S. Department of Agriculture permit, required for import and interstate transport of pathogens, may be obtained from the U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products Office, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Telephone; 301–436–7830 or 8499; FAX 301–436–8226

Appendix B–VI–G. National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses, U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790, October 1974.

Appendix B–VI–H. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Appendix B–VI–I. Tables 3–6 (See Appendix B–VI–D)

Appendix B–VI–I–A. Table 3. Arboviruses and Arenaviruses Assigned to Biosafety Level 2

Acado
Acara
Aguacate
Alfuy
Almpiwar
Amapari
Ananindeua
Anhanga
Anhembi
Anopheles A
Anopheles B
Apeu
Apoi
Aride
Arkonam
Aroa
Aruac
Arumowot
Aura
Avalon
Abras
Abu Hammad
Aabahoyo
Bagaza
Bahig
Bakau
Baku
Bandia
Bangoran
Bangui
Banzi
Barmah Forest
Barur
Batai
Batama
Bauline
Bebaru
Belmont
Benevides
Benfica
Bertioga
Bimiti
Birao
Bluetongue
Boraceia
Botambi
Boteke
Bouboui
Bujaru
Bunyamwera
Bunyip
Burg E Arab
Bushbush
Bussuquara
Buttonwillow
Bwamba
Cacao
Cache Valley
Caimito
California enc.
Calovo
Candiru
Cape Wrath
Capim
Caraparu
Carey Island
Catu
Chaco
Chagres
Chandipura
Changuinola
Charleville
Chenuda
Chilibre
Chobar gorge
Clo Mor
Colorado tick fever
Corriparta
Cotia
Cowbone Ridge
Csiro Village
Cuiaba-D'aguilar
Dakar Bat
Dengue-1
Dengue-2
Dengue-3
Dengue-4
Dera Ghazi Khan
East. equine enc.[d]
Edge Hill
Entebbe Bat
Ep. Hem. Disease
Erve
Eubenangee
Eyach
Flanders
Fort Morgan
Frijoles
Gamboa
Gan Gan
Gomoka
Gossas
Grand Arbaud
Great Island
Guajara
Guama
Guaratuba
Guaroa
Gumbo Limbo
Hart Park
Hazara
Highlands J
Huacho
Hughes
Icoaraci
Ieri
Ilesha
Ilheus
Ingwavuma
Inkoo
Ippy
Irituia
Isfahan
Itaporanga
Itaqui
Jamestown Canyon
Japanaut
Jerry Slough
Johnston Atoll
Joinjakaka
Juan Diaz
Jugra
Jurona
Jutiapa
Kadam
Kaeng Khoi
Kaikalur
Kaisodi
Kamese
Kammavan pettai
Kannaman galam
Kao Shuan
Karimabad
Karshi
Kasba
Kemerovo
Kern Canyon
Ketapang
Keterah

Keuraliba
Keystone
Kismayo
Klamath
Kokobera
Kolongo
Koongol
Kotonkan
Kowanyama
Kunjin
Kununurra
Kwatta
La Crosse
La Joya
Lagos Bat
Landjia
Langat
Lanjan
Las Maloyas
Latino
Le Dantec
Lebombo
Lednice
Lipovnik
Lokern
Lone Star
Lukuni
M'poko
Madrid
Maguari
Mahogany Hammock
Main Drain
Malakal
Manawa
Manzanilla
Mapputta
Maprik
Marco
Marituba
Marrakai
Matariya
Matruh
Matucare
Melao
Mermet
Minatitlan
Minnal
Mirim
Mitchell River
Modoc
Moju
Mono Lake
Mont. myotis leuk.
Moriche
Mosqueiro
Mossuril
Mount Elgon Bat
Murutucu
Mykines
Navarro
Nepuyo
Ngaingan
Nique
Nkolbisson
Nola
Ntaya
Nugget
Nyamanini
Nyando
O'nyong-nyong
Okhotskiy
Okola
Olifantsvlei
Oriboca
Ossa
Pacora
Pacui
Pahayokee
Palyam
Parana
Pata
Pathum Thani
Patois
Phnom-Penh Bat
Pichinde
Pixuna
Pongola
Ponteves
Precarious Point
Pretoria
Prospect Hill
Puchong
Punta Salinas
Punta Toro
Qalyub
Quaranfil
Restan
Rio Bravo
Rio Grande
Ross River
Royal Farm
Sabo
Saboya
Saint Floris
Sakhalin
Salehabad
San angelo
Sandfly f. (Naples)
Sandfly f. (Sicilian)
Sandjimba
Sango
Sathuperi
Sawgrass
Sebokele
Seletar
Sembalam
Serra do Navio
Shamonda
Shark River
Shuni
Silverwater
Simbu
Simian hem. fever
Sindbis
Sixgun City
Snowshoe Hare
Sokuluk
Soldado
Sororoca
Stratford
Sunday Canyon
Tacaiuma
Tacaribe
Taggert
Tahyna
Tamiami
Tanga
Tanjong Rabok
Tataguine
Tehran
Tembe
Tembusu
Tensaw
Tete
Tettnang
Thimiri
Thottapalayam
Tibrogargan
Timbo
Timboteua
Tindholmur
Toscana
Toure
Tribec
Triniti
Trivittatus
Trubanaman
Tsuruse
Turlock
Tyuleniy
Uganda S
Umatilla
Umbre
Una
Upolu
Urucuri
Usutu
Uukuniemi
Vellore
Venkatapuram
Vinces
Virgin River
VS-Indiana
VS-New Jersey
Wad Medani
Wallal
Wanowrie
Warrego
West. equine enc.[d]
Whataroa
Witwatersrand
Wonga
Wongorr
Wyeomyia
Yaquinea Head
Yata
Yogue
Zaliv Terpeniya
Zegla
Zika
Zingilamo
Zirqa

Footnote:

[d] A vaccine is available and is recommended for all persons working with this agent.

Appendix B–VI–I–B

TABLE 4.—VACCINE STRAINS OF RISK GROUP 3 AND 4 VIRUSES WHICH MAY BE HANDLED AT BL2

| Virus | Vaccine strain |
|---|---|
| Chikungunya | 131/25 |
| Junin | Candid #1 |

TABLE 4.—VACCINE STRAINS OF RISK GROUP 3 AND 4 VIRUSES WHICH MAY BE HANDLED AT BL2—Continued

| Virus | Vaccine strain |
|---|---|
| Rift Valley fever | MP–12 |
| Venezuelan equine encephalomyelitis. | TC–83 |
| Yellow fever | 17–D |

Appendix B–VI–I–C. Table 5. Arboviruses and Certain Other Viruses Assigned to Biosafety Level 3 (on the basis of insufficient experience)

Adelaide River
Agua Preta
Alenquer
Almeirim
Altamira
Andasibe
Antequera
Araguari
Aransas Bay
Arbia
Arboledas
Babanki
Batken
Belem
Berrimah
Bimbo
Bobaya
Bobia
Bozo
Buenaventura
Cabassue[c,d]
Cacipacore
Calchaqui
Cananeia
Caninde
Chim
Coastal Plains
Connecticut
Corfou
Dabakala
Douglas
Enseada
Estero Real
Fomede
Forecariah
Fort Sherman
Gabek Forest
Gadgets Gully
Garba
Gordil
Gray Lodge
Gurupi
Iaco
Ibaraki
Ife
Ingangapi
Inini
Issyk-Kul
Itaituba
Itimirim
Itupiranga
Jacareacanga
Jamanxi
Jari
Kedougou
Khasan
Kindia
Kyzylagach
Lake Clarendon
Llano Seco
Macaua
Mapuera
Mboke
Meaban
Mojui Dos Compos
Monte Dourado
Munguba
Naranjal
Nariva
Nasoule
Ndelle
New Minto
Ngari
Ngoupe
Nodamura
Northway
Odrenisrou
Omo
Oriximina
Ouango
Oubangui
Oubi
Ourem
Palestina
Para
Paramushir
Paroo River
Perinet
Petevo
Picola
Playas
Pueblo Viejo
Purus
Radi
Razdan
Resistencia
Rochambeau
Salanga
San Juan
Santa Rosa
Santarem
Saraca
Saumarez Reef
Sedlec
Sena Madureira
Sepik
Shokwe
Slovakia
Somone
Spipur
Tai
Tamdy
Telok Forest
Termeil
Thiafora
Tilligerry
Tinaroo
Tlacotalpan
Tonate[c,d]
Ttinga
Xiburema
Yacaaba
Yaounde
Yoka
Yug Bogkanova

Footnotes:

[c] SALS recommends that work with this agent should be conducted only in Biosafety Level 3 facilities which provide for HEPA filtration of all exhaust air prior to discharge from the laboratory.

[d] A vaccine is available and is recommended for all persons working with this agent.

Appendix B VI–I–D. Table 6. Arboviruses and Certain Other Viruses Assigned to Biosafety Level 3

Aino
Akabane
Bhanja
Chikungunya[c,d]
Cocal
Dhori
Dugbe
Everglades[c,d]
Flexal
Germiston[c]
Getah
Hantaan
Israel Turkey mening.
Japanese enc.
Junin[c,d]
Kairi
Kimberley
Koutango
Louping Ill[a,c]
Mayaro
Middelburg
Mobala
Mopeia[e]
Mucambo[c,d]
Murray Valley enc.
Nairobi sheep disease[a]
Ndumu
Negishi
Oropouche[c]
Orungo
Peaton
Piry
Powassan
Puumala
Rift Valley fever[a,b,c,d]
Sagiyama
Sal Vieja
San Perlita
Semliki Forest
Seoul
Spondweni
St. Louis enc.
Thogoto
Tocio[c]
Turuna
Venezuelan equine[c,d] encephalitis
Vesicular Stomatitus (alagoas)
Wesselsbron[a,c]
West Nile
Yellow fever[c,d]
Zinga[b]

Footnotes:

[a] The importation, possession, or use of this agent is restricted by USDA regulation or

administrative policy (see Appendix B–VI–D).

[b] Zinga virus is now recognized as being identical to Rift Valley Fever virus.

[c] SALS recommends that work with this agent should be conducted only in Biosafety Level 3 facilities which provide for HEPA filtration of all exhaust air prior to discharge from the laboratory.

[d] A vaccine is available and is recommended for all persons working with this agent.

[e] This virus is presently being registered in the Catalogue of Arboviruses.

## IX. Proposed Amendments to Sections I, III, IV, V, and Appendix M of the NIH Guidelines Regarding NIH and FDA Consolidated Review of Human Gene Transfer Protocols

On July 18–19, 1994, the National Task Force on AIDS Drug Development held an open meeting for the purpose of identifying barriers to AIDS Drug Discovery that included a proposal to streamline the dual review process for human gene transfer experiments. Members of the Task Force recommended a consolidated review process to enhance interactions between the NIH and the Food and Drug Administration (FDA). As a result of the Task Force's deliberations, recommendations were adopted in order to eliminate any unnecessary overlap between the FDA and NIH review of human gene transfer proposals. Both Drs. Varmus and Kessler noted that their respective agencies would cooperate fully to effect the changes necessary to implement these recommendations.

The NIH and FDA proposed that the RAC become advisory to both the NIH Director and the FDA Commissioner with regard to the review of human gene transfer protocols. In the interest of maximizing the resources of both agencies and simplifying the method and period of review for research protocols involving human gene transfer, the FDA and NIH should institute an interagency consolidated review process that incorporates the following principal elements:

(1) All human gene transfer protocols shall be submitted directly to the FDA. Submission will be in the format required by the FDA and the same format will be used by the RAC when public review is deemed necessary.

(2) Upon receipt, FDA review will proceed. The NIH/ORDA staff will simultaneously evaluate the protocol for possible RAC review.

(3) Factors which may contribute to the need for RAC review include: (a) new vectors/new gene delivery systems, (b) new diseases, (c) unique applications of gene transfer, and (d) other issues that require further public review.

(4) If either the FDA or NIH/ORDA decides that a proposal should be reviewed by the RAC, the proposal will be forwarded to the RAC primary reviewers immediately. Whenever possible, Principal Investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. (RAC reviewed applications will be distributed to RAC members approximately four weeks prior to the next quarterly RAC meeting.)

(5) Semiannual data reporting procedures will remain the responsibility of NIH (ORDA). Semiannual data reports will be reviewed by the RAC in a public forum.

In a letter dated August 2, 1994, Dr. Nelson A. Wivel, Director, ORDA, NIH, provided the RAC with background information regarding the National Task Force on AIDS Drug Development meeting, and proposed amendments to Sections I, III, IV, V, and Appendix M of the NIH Guidelines, to reflect the proposed consolidated review process. The revised review process was proposed as follows:

(1) Investigators will be required to submit all human gene transfer proposals directly to the FDA in the format required by the FDA; therefore, investigators will no longer be required to provide a separate submission to NIH/ORDA for RAC review. The FDA Division of Cellular and Gene Therapies will forward a copy of each submission to NIH/ORDA. Both the FDA Division of Cellular and Gene Therapies and NIH/ORDA will simultaneously evaluate each proposal for the necessity for RAC review. Whenever possible, the investigators will be notified within 15 working days following receipt of the submission regarding the necessity for RAC review.

(2) If either the FDA or NIH/ORDA decides that a proposal should undergo RAC review, the proposal will be forwarded to the RAC primary reviewers immediately. Any protocol submitted less than 8 weeks before a RAC meeting will be reviewed at the following quarterly RAC meeting.

(3) The RAC will make recommendations regarding approval/disapproval of protocols, including any relevant stipulations, to the NIH Director. The NIH Director will review, approve, and transmit the RAC's recommendations/stipulations to the FDA Commissioner.

(4) The FDA will consider such recommendations/stipulations and will be responsible for completion of review. The RAC and NIH/ORDA will no longer have the responsibility for reviewing material submitted for Accelerated Review or for the review of minor modifications to human gene transfer protocols.

These proposed actions were discussed during the September 12–13, 1994, RAC meeting (published for public comments in the **Federal Register**, August 23, 1994 (59 FR 43426)). Dr. Philip Noguchi, Director, Division of Cellular and Gene Therapies, Center for Biologics Evaluation and Research, FDA, provided additional suggestions regarding the proposed review process including FDA adoption of the Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subject (Points to Consider), of the NIH Guidelines. The FDA will require investigators to submit the Points to Consider with their proposed experiments. A lengthy discussion ensued involving RAC members' concerns and suggestions regarding the consolidated review process.

Dr. Noguchi submitted the following compromise proposal regarding the NIH/FDA consolidated review of human gene transfer experiments:

(1) Appendix M, Points to Consider, will not be deleted from the NIH Guidelines. The NIH Guidelines will be modified to provide for submission of Appendix M, Points to Consider, directly to the FDA prior to IND submission. The FDA will update their guidance documents in a similar manner. When necessary, the RAC will continue to be responsible for modifying Appendix M, Points to Consider.

(2) The FDA, NIH/ORDA, and RAC will decide on the necessity for full RAC review. The submitted Appendix M, Points to Consider, will be publicly available for all human gene transfer submissions even if RAC review is not required.

(3) The RAC and FDA will broaden their scope of review for human gene transfer proposals to jointly and prospectively address global issues on a regular basis, e.g., ethical consideration in the implementation of gene therapy patient registry, access for ''orphan'' genetic disease patients to therapies, criteria for prenatal gene therapy, and transgenic technology for xenotransplantation.

(4) The FDA, NIH/ORDA, and RAC will establish a working group to enhance data monitoring efforts.

(5) An FDA, NIH/ORDA, and RAC working group will be established to propose long-term consolidation. The working group will have input from

public, academic, and corporate sources.

The RAC approved a motion made by Dr. Miller and seconded by Dr. Zallen to accept the following: (1) the FDA proposal submitted by Dr. Noguchi; (2) adopt the Categories for Accelerated Review that were approved by the RAC at its March 3–4, 1994, meeting, as guidelines for proposals that will not require RAC review; (3) establish a working group to examine the review process for human gene transfer protocols (in response to Dr. Varmus' request to establish such a group); (3) the RAC prefers that any stipulation requirements should be satisfactorily met prior to forwarding its recommendation for approval to the NIH Director; and (4) accept the proposed amendments to the NIH Guidelines to reflect this revised consolidated review process (including acceptance of a revised Appendix M and incorporation of minor editorial changes).

The motion was approved by a vote of 15 in favor, 0 opposed, and 1 abstention.

On October 26, 1994, NIH/ORDA forwarded these actions to the NIH Guidelines (incorporating the modifications accepted by the RAC), to the NIH Director for approval and the FDA Commissioner for concurrence. FDA legal counsel expressed concern that implementation of the proposed actions would require amendments to the FDA Investigational New Drug Application Regulations (21 CFR Part 312) to accommodate the release of proprietary information. To resolve this concern, a waiver for the release of information from the FDA to the NIH was proposed. While the NIH Guidelines could require such a waiver for NIH-funded investigators, it would be voluntary for others submitting proposed human gene transfer experiments to the FDA.

The NIH expressed concern that failure to comply with the voluntary waiver procedures may result in the loss of critical information necessary to maintain: (1) The human gene therapy database, (2) ''real-time'' reporting of serious adverse events, (3) comprehensive overview (by category) by the RAC in a public forum. Public review and access to submission, review, and follow-up information is critical to the safe and focussed advancement of human gene therapy research.

As a result of these concerns, NIH and FDA agreed on a compromise proposal that would accommodate the single submission format proposed at the July 18–19, 1994, meeting of the National Task Force on AIDS Drug Development, yet maintain public access to critical information and ''real-time'' adverse event reporting. The compromise proposal involves simultaneous submission of a human gene transfer proposal to both the FDA and the NIH in a single submission format. This format includes (but is not limited) to the documentation described in Appendix M–I through M–V, of the Points to Consider. NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

Section I–A, Purpose, is proposed to read:

Section I–A. Purpose

The purpose of the NIH Guidelines is to specify practices for constructing and handling: (i) recombinant deoxyribonucleic acid (DNA) molecules, and (ii) organisms and viruses containing recombinant DNA molecules.

Section I–A–1. Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approvals, or other applicable clearances, have been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval (see exception in Section I–A–1–a).

Section I–A–1–a. In the interest of maximizing the resources of both the NIH and the Food and Drug Administration (FDA) and simplifying the method and period for review, research proposals involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a consolidated review process involving both the FDA and the NIH. Submission of human gene transfer proposals will be in the format described in Appendices M–I through M–V of the Points to Consider. Investigators must simultaneously submit their human gene transfer proposal to both the FDA and the NIH in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M–I through M–V, of the Points to Consider. NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

Section III beginning paragraphs is proposed to read:

This section describes five categories of experiments involving recombinant DNA: (i) those that require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation (see Section III–A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see Section III–B); (iii) those that require Institutional Biosafety Committee approval before initiation (see Section III–C), (iv) those that require Institutional Biosafety Committee notification simultaneous with initiation (see Section III–D), and (v) those that are exempt from the NIH Guidelines (see Section III–E).

**Note:** If an experiment falls into either Section III–A or Section III–B and one of the other categories, the rules pertaining to Section III–A or Section III–B shall be followed. If an experiment falls into Section III–E and into either Sections III–C or III–D categories as well, the experiment is considered exempt from the NIH Guidelines.

Any change in containment level, which is different from those specified in the NIH Guidelines, may not be initiated without the express approval of NIH/ORDA (see Minor Actions, Section IV–C–1–b–(2) and its subsections).

Section III–A is proposed to read:

Section III–A. Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation (see Section IV–C–1–b–(1)).

Section III–A–1. Major Actions Under the NIH Guidelines

Experiments considered as Major Actions under the NIH Guidelines cannot be initiated without submission of relevant information on the proposed experiment to the Office of Recombinant DNA Activities, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838, the publication of the proposal in the **Federal Register** for 15 days of comment, review by the RAC, and specific approval by the NIH (see Appendix M for submission requirements on human gene transfer experiments). The containment conditions or stipulation requirements for such experiments will be recommended by the RAC and set by the NIH at the time of approval. Such experiments require Institutional Biosafety Committee approval before initiation. Specific experiments already approved are included in Appendix D which may be obtained from the Office

of Recombinant DNA Activities, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838.

Section III–A–1–a. The deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally (see Section V–B), if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture, will be reviewed by the RAC.

Section III–A–2. Human Gene Transfer Experiments

Investigators must simultaneously submit their human gene transfer proposal to both the FDA and the NIH in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M–I through M–V, of the Points to Consider. The NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

Factors that may contribute to the necessity for RAC review include: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC review are those determined by the FDA and NIH/ORDA not to represent possible risk to human health or the environment (see Appendix M–VII, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review). Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that NIH/ORDA and the FDA require RAC review of the submitted proposal, the documentation described in Appendices M–I through M–V of the Points to Consider, will be forwarded to the RAC primary reviewers for evaluation. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. The RAC and FDA prefer that information provided in response to Appendix M contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be transmitted to the FDA Commissioner and considered as a Major Action by the NIH Director.

Section III–B is proposed to read:

Section III–B. Experiments That Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation

Section III–B–1. Experiments Involving the Cloning of Toxin Molecules With $LD_{50}$ of Less Than 100 Nanograms per Kilogram Body Weight

Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an $LD_{50}$ of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, and *Shigella dysenteriae* neurotoxin). Specific approval has been given for the cloning in *Escherichia coli* K–12 of DNA containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Specific experiments already approved under this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838.

Section III–B–1–(a). Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH/ORDA. The containment conditions for such experiments will be determined by NIH/ORDA in consultation with *ad hoc* experts. Such experiments require Institutional Biosafety Committee approval before initiation (see Section IV–B–2–b–(1)).

Section III–C–7 is proposed to be deleted:

Section III–C–7. Human Gene Transfer Experiments Not Covered by Sections III–A–2, III–B–2, III–B–3, and Not Considered Exempt Under Section V–U

Certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that are not covered by Sections III–A–2, III–B–2, III–B–3, and that are not considered exempt under Section V–U must be registered with NIH/ORDA. The relevant Institutional Biosafety Committee and Institutional Review Board must review and approve all experiments in this category prior to their initiation.

Section IV–B–4–b, Submissions by the Principal Investigator to the NIH/ORDA, is proposed to read:

Section IV–B–4–b–(3). Petition NIH/ORDA, with concurrence of the Institutional Biosafety Committee, for approval to conduct experiments specified in Sections III–A–1 and III–B of the NIH Guidelines;

In Section IV–B–4–e, Responsibilities of the Principal Investigator During the Conduct of the Research, the following section is added:

Section IV–B–4–e–(5). Comply with semiannual data reporting and adverse event reporting requirements for NIH and FDA-approved human gene transfer experiments (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols).

Section IV–C–1–b–(1), Major Actions, the first paragraph is proposed to read:

To execute Major Actions, the NIH Director shall seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the Notice of Meeting and Proposed Actions shall be published in the **Federal Register** at least 15 days before the RAC meeting. The NIH Director's decision/recommendation (at his/her discretion) may be published in the **Federal Register** for 15 days of comment before final action is taken. The NIH Director's final decision/recommendation, along with responses to public comments, shall be published in the **Federal Register**. The RAC and Institutional Biosafety Committee Chairs shall be notified of the following decisions:

Section IV–C–1–b–(1)–(e) is proposed to read:

Section IV–C–1–b–(1)–(e). Recommendations made by the NIH Director to the FDA Commissioner regarding RAC-reviewed human gene transfer experiments (see Appendix M–VI–E, RAC Recommendations to the NIH Director);

Except for renumbering, the rest of the Section IV–C–1–b–(1) would remain unchanged.

In Section IV–C–1–b–(2), Minor Actions, the following sections are proposed to be deleted:

Section IV–C–1–b–(2)–(a). Reviewing and approving certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that qualify for the Accelerated Review process (see Section III–B–2);

Section IV–C–1–b–(2)–(b). Reviewing and approving minor changes to human gene transfer protocols under Section III–A–2 and III–B–2;

The rest of Section IV–C–1–b–(2) would be renumbered.

Section IV–C–3, Office of Recombinant DNA Activities (ORDA), is proposed to read:

Section IV–C–3. Office of Recombinant DNA Activities (ORDA)

ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including institutions, Biological Safety Officers, Principal Investigators, Federal agencies, state and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the NIH Director. ORDA's responsibilities include, but are not limited to the following:

Section IV–C–3–a. Evaluating human gene transfer protocols for the necessity for RAC review (see Appendix M–VI–A);

Section IV–C–3–b. Serving as the focal point for data management of FDA and NIH approved human gene transfer protocols (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols);

Section IV–C–3–c. Administering the semiannual data reporting requirements (and subsequent review) for human gene transfer experiments, including experiments that are reviewed solely by the FDA (see Appendix M–VI, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review);

Section IV–C–3–d. Maintaining an inventory of NIH- and FDA-approved human gene transfer experiments (including subsequent modifications);

Section IV–C–3–e. Reviewing and approving experiments in conjunction with *ad hoc* experts involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an $LD_{50}$ of less than or equal to 100 nanograms per kilogram body weight in organisms other than *Escherichia coli* K–12 (see Section III–B–1 and Appendices F–I and F–II);

Section IV–C–3–f. Serving as the executive secretary of the RAC;

Section IV–C–3–g. Publishing in the **Federal Register**:

Section IV–C–3–g–(1). Announcements of RAC meetings and agendas at least 15 days in advance (Note—If the agenda for a RAC meeting is modified, ORDA shall make the revised agenda available to anyone upon request in advance of the meeting);

Section IV–C–3–g–(2). Proposed Major Actions (see Section IV–C–1–b–(1)) at least 15 days prior to the RAC meeting; and

Section IV–C–3–h. Reviewing and approving the membership of an institution's Institutional Biosafety Committee, and where it finds the Institutional Biosafety Committee meets the requirements set forth in Section IV–B–2 will give its approval to the Institutional Biosafety Committee membership,

In Section V, Footnotes and References of Sections I through IV, the following sections are proposed to be deleted:

Section V–U. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not expected, are not covered under Sections III–A–2, III–B–2, or III–B–3. Such studies may be initiated without RAC review and NIH approval if approved by another Federal agency.

Section V–V. For recombinant DNA experiments in which the intent is to modify stably the genome of cells of one or more human subjects (see Sections III–A–2, III–B–2, and III–B–3).

Section V–W would be renumbered to Section V–U:

Section V–U. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacteria, or fungus) is one that is unknown to occur within the U.S. (see Section V–R). Determination of whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the Principal Investigator and the Institutional Biosafety Committee, in consultation with scientists knowledgeable of plant diseases, crops, and ecosystems in the geographic area of the research.

In Appendix C, Exemptions under Section III–E–6, the following sections are proposed to read:

Appendix C–I–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation. * * *

Appendix C–II–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation. * * *

Appendix C–III–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation. * * *

Appendix C–IV–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation. * * *

Appendix C–V–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation. * * *

Appendix C–VI–A–1. The NIH Director, with advice of the RAC, may revise the classification for the purposes of these NIH Guidelines (see Section IV–C–1–b–(2)–(b). * * *

In Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates, the following sections are proposed to be amended due to reference changes:

Appendix F–I. General Information

. . . The results of such tests shall be forwarded to NIH/ORDA, which will consult with *ad hoc* experts, prior to inclusion of the molecules on the list (see Section IV–C–1–b–(2)–(c)).

Appendix F–III. Cloning of Toxic Molecule Genes in Organisms Other Than *Escherichia coli* K–12

Requests involving the cloning of genes coding for toxin molecules for vertebrates at an $LD_{50}$ of <100 nanograms per kilogram body weight in host-vector systems other than *Escherichia coli* K–12 will be evaluated by NIH/ORDA in consultation with *ad hoc* toxin experts (see Sections III–B–1 and IV–C–1–b–(2)–(c)).

In Appendix G, Physical Containment, the following section is proposed to be amended due to a reference change:

Appendix G–II. Physical Containment Levels

* * * Consideration will be given by the NIH Director, with the advice of the

RAC, to other combinations which achieve an equivalent level of containment (see Section IV–C–1–b–(2)–(a).

In Appendix I, Biological Containment, the following section is proposed to be amended due to a reference change:

Appendix I–II–A. Responsibility

* * * Proposed host-vector systems will be reviewed by the RAC (see Section IV–C–1–b–(1)–(f). * * * Minor modifications to existing host-vector systems (i.e., those that are of minimal or no consequence to the properties relevant to containment), may be certified by the NIH Director without prior RAC review (see Section IV–C–1–b–(2)–(f). * * * The NIH Director may rescind the certification of a host-vector system (see Section IV–C–1–b–(2)–(g).* * *

Appendix M, The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subjects (Points to Consider), is proposed to read:

Appendix M. The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into the Genome of One or More Human Subjects (Points to Consider)

Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH. Researchers not covered by the NIH Guidelines are encouraged to use Appendix M.

The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. In November 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, Splicing Life, which resulted from a two-year process of public deliberation and hearings. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded: civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies. In light of this public support, the Recombinant DNA Advisory Committee (RAC) is prepared to consider proposals for somatic cell gene transfer.

The RAC will not at present entertain proposals for germ line alterations but will consider proposals involving somatic cell gene transfer. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into the subject's somatic cells. Germ line alteration involves a specific attempt to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

In the interest of maximizing the resources of both the NIH and the Food and Drug Administration (FDA) and simplifying the method and period for review, research proposals involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a consolidated review process involving both the FDA and the NIH. Submission of human gene transfer proposals will be in the format described in Appendices M–I through M–V of the Points to Consider. Investigators must simultaneously submit their human gene transfer proposal to both the FDA and the NIH in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M–I through M–V of the Points to Consider. NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

Factors that may contribute to the necessity for RAC review include: (i) new vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC review are those determined by the FDA and NIH/ORDA not to represent possible risk to human health or the environment (see Appendix M–VII, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review). Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that NIH/ORDA and the FDA require RAC review of the submitted proposal, the documentation described in Appendices M–I through M–V of the Points to Consider, will be forwarded to the RAC primary reviewers for evaluation. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. The RAC and FDA prefer that information provided in response to Appendix M contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be transmitted to the FDA Commissioner and considered as a Major Action by the NIH Director.

Public review of human gene transfer proposals will serve to inform the public about the technical aspects of the proposals as well as the meaning and significance of the research.

In its evaluation of human gene transfer proposals, the RAC, NIH/ORDA, and the FDA will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigation, namely, to protect the health and well being of human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, Appendices M–I through M–V requests information that will enable the RAC, NIH/ORDA, and the FDA, to assess the possibility that the proposed experiment(s) will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives).

In recognition of the social concern that surrounds the subject of human gene transfer, the RAC, NIH/ORDA, and the FDA, will cooperate with other groups in assessing the possible long-term consequences of the proposal and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

Appendix M will be considered for revisions as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

Appendix M–I. Submission Requirements—Human Gene Transfer Proposals

Investigators must simultaneously submit the following material to both: (1) the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052 (see exemption in Appendix M–IX–A); and (2) the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448. Proposals will be submitted in the following order: (1) scientific abstract—1 page; (2) non-technical abstract—1 page; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol (the IBC and IRB may, at their discretion, condition their approval on further specific deliberation by the RAC); (4) Responses to Appendix M–II, Description of the Proposal—5 pages; (5) protocol (as approved by the local Institutional Biosafety Committee and Institutional Review Board)—20 pages; (6) Informed Consent document—approved by the Institutional Review Board (see Appendix M–III); (7) appendices (including tables, figures, and manuscripts); (8) curricula vitae—2 pages for each key professional person in biographical sketch format; and (9) three 3 1/2 inch diskettes with the complete vector nucleotide sequence in ASCII format.

Appendix M–II. Description of the Proposal

Responses to this appendix should be provided in the form of either written answers or references to specific sections of the protocol or its appendices. Investigators should indicate the points that are not applicable with a brief explanation. Investigators submitting proposals that employ the same vector systems may refer to preceding documents relating to the vector sequence without having to rewrite such material.

Appendix M–II–A. Objectives and Rationale of the Proposed Research

State concisely the overall objectives and rationale of the proposed study. Provide information on the specific points that relate to whichever type of research is being proposed.

Appendix M–II–A–1. Use of Recombinant DNA for Therapeutic Purposes

For research in which recombinant DNA is transferred in order to treat a disease or disorder (e.g., genetic diseases, cancer, and metabolic diseases), the following questions should be addressed:

Appendix M–II–A–1–a. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

Appendix M–II–A–1–b. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

Appendix M–II–A–1–c. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

Appendix M–II–A–1–d. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

Appendix M–II–A–2. Transfer of DNA for Other Purposes

Appendix M–II–A–2–a. Into what cells will the recombinant DNA be transferred? Why is the transfer of recombinant DNA necessary for the proposed research? What questions can be answered by using recombinant DNA?

Appendix M–II–A–2–b. What alternative methodologies exist? What are their relative advantages and disadvantages as compared to the use of recombinant DNA?

Appendix M–II–B. Research Design, Anticipated Risks and Benefits

Appendix M–II–B–1. Structure and Characteristics of the Biological System

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

Appendix M–II–B–1–a. What is the structure of the cloned DNA that will be used?

Appendix M–II–B–1–a–(1). Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

Appendix M–II–B–1–a–(2). What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)? From what source are these elements derived? Summarize what is currently known about the regulatory character of each element.

Appendix M–II–B–1–a–(3). Describe the steps used to derive the DNA construct.

Appendix M–II–B–1–b. What is the structure of the material that will be administered to the patient?

Appendix M–II–B–1–b–(1). Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells: (i) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests? (ii) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, VL30 RNA, other nucleic acids, or proteins) or contaminating viruses (both replication-competent or replication-defective) or other organisms in the cells or serum used for preparation of the virus stock including any contaminants that may have biological effects? (iii) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being conducted to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells? (iv) If methods other than those covered by Appendices M–II–B–1 through M–II–B–3 are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

Appendix M–II–B–1–b–(2). Describe any other material to be used in

preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

Appendix M–II–B–2. Preclinical Studies, Including Risk-Assessment Studies

Provide results that demonstrate the safety, efficacy, and feasibility of the proposed procedures using animal and/or cell culture model systems, and explain why the model(s) chosen is/are most appropriate.

Appendix M–II–B–2–a. Delivery System

Appendix M–II–B–2–a–(1). What cells are the intended target cells of recombinant DNA? What target cells are to be treated *ex vivo* and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the target cells will incorporate the DNA?

Appendix M–II–B–2–a–(2). Is the delivery system efficient? What percentage of the target cells contain the added DNA?

Appendix M–II–B–2–a–(3). How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

Appendix M–II–B–2–a–(4). How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

Appendix M–II–B–2–b. Gene Transfer and Expression

Appendix M–II–B–2–b–(1). What animal and cultured cell models were used in laboratory studies to assess the *in vivo* and *in vitro* efficacy of the gene transfer system? In what ways are these models similar to and different from the proposed human treatment?

Appendix M–II–B–2–b–(2). What is the minimal level of gene transfer and/or expression that is estimated to be necessary for the gene transfer protocol to be successful in humans? How was this level determined?

Appendix M–II–B–2–b–(3). Explain in detail all results from animal and cultured cell model experiments which assess the effectiveness of the delivery system in achieving the minimally required level of gene transfer and expression.

Appendix M–II–B–2–b–(4). To what extent is expression only from the desired gene (and not from the surrounding DNA)? To what extent does the insertion modify the expression of other genes?

Appendix M–II–B–2–b–(5). In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene?

Appendix M–II–B–2–b–(6). Is the gene expressed in cells other than the target cells? If so, to what extent?

Appendix M–II–B–2–c. Retrovirus Delivery Systems

Appendix M–II–B–2–c–(1). What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

Appendix M–II–B–2–c–(2). How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

Appendix M–II–B–2–c–(3). What laboratory evidence is available concerning potential harmful effects of the transfer (e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses)? What steps will be taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

Appendix M–II–B–2–c–(4). Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ-line cells? What is the sensitivity of these analyses?

Appendix M–II–B–2–c–(5). Has a protocol similar to the one proposed for a clinical trial been conducted in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

Appendix M–II–B–2–d. Non-Retrovirus Delivery/Expression Systems

If a non-retroviral delivery system is used, what animal studies have been conducted to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ-line cells)? How long have the animals been studied after treatment? What safety studies have been conducted? (Include data about the level of sensitivity of such assays.)

Appendix M–II–B–3. Clinical Procedures, Including Patient Monitoring

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study. Specifically:

Appendix M–II–B–3–a. Will cells (e.g., bone marrow cells) be removed from patients and treated *ex vivo*? If so, describe the type, number, and intervals at which these cells will be removed.

Appendix M–II–B–3–b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy)?

Appendix M–II–B–3–c. What treated cells (or vector/DNA combination) will be given to patients? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

Appendix M–II–B–3–d. How will it be determined that new gene sequences have been inserted into the patient's cells and if these sequences are being expressed? Are these cells limited to the intended target cell populations? How sensitive are these analyses?

Appendix M–II–B–3–e. What studies will be conducted to assess the presence and effects of the contaminants?

Appendix M–II–B–3–f. What are the clinical endpoints of the study? Are there objectives and quantitative measurements to assess the natural history of the disease? Will such measurements be used in patient follow-up? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be conducted? How long will patient follow-up continue?

Appendix M–II–B–3–g. What are the major beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of deleterious consequences from the disease if recombinant DNA transfer is not used.

Appendix M–II–B–3–h. If a treated patient dies, what special post-mortem studies will be performed?

Appendix M–II–B–4. Public Health Considerations

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

Appendix M–II–B–4–a. On what basis are potential public health benefits or hazards postulated?

Appendix M–II–B–4–b. Is there a significant possibility that the added DNA will spread from the patient to other persons or to the environment?

Appendix M–II–B–4–c. What precautions will be taken against such spread (e.g., patients sharing a room, health-care workers, or family members)?

Appendix M–II–B–4–d. What measures will be undertaken to mitigate the risks, if any, to public health?

Appendix M–II–B–4–e. In light of possible risks to offspring, including vertical transmission, will birth control measures be recommended to patients? Are such concerns applicable to health care personnel?

Appendix M–II–B–5. Qualifications of Investigators and Adequacy of Laboratory and Clinical Facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of recombinant DNA. Describe the laboratory and clinical facilities where the proposed study will be performed. Specifically:

Appendix M–II–B–5–a. What professional personnel (medical and nonmedical) will be involved in the proposed study and what is their relevant expertise? Provide a two-page curriculum vitae for each key professional person in biographical sketch format (see Appendix M–I, Submission Requirements).

Appendix M–II–B–5–b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period? What special arrangements will be made for the comfort and consideration of the patients. Will the research institution designate an ombudsman, patient care representative, or other individual to help protect the rights and welfare of the patient?

Appendix M–II–C. Selection of the Patients

Estimate the number of patients to be involved in the proposed study. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable. Specifically:

Appendix M–II–C–1. How many patients do you plan to involve in the proposed study?

Appendix M–II–C–2. How many eligible patients do you anticipate being able to identify each year?

Appendix M–II–C–3. What recruitment procedures do you plan to use?

Appendix M–II–C–4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

Appendix M–II–C–5. How will patients be selected if it is not possible to include all who desire to participate?

Appendix M–III. Informed Consent

In accordance with the Protection of Human Subjects (45 CFR Part 46), investigators should indicate how subjects will be informed about the proposed study and the manner in which their consent will be solicited. They should indicate how the Informed Consent document makes clear the special requirements of gene transfer research. If a proposal involves children, special attention should be paid to the Protection of Human Subjects (45 CFR Part 46), Subpart D, Additional Protections for Children Involved as Subjects in Research.

Appendix M–III–A. Communication About the Study to Potential Participants

Appendix M–III–A–1. Which members of the research group and/or institution will be responsible for contacting potential participants and for describing the study to them? What procedures will be used to avoid possible conflicts of interest if the investigator is also providing medical care to potential subjects?

Appendix M–III–A–2. How will the major points covered in Appendix M–II, Description of Proposal, be disclosed to potential participants and/or their parents or guardians in language that is understandable to them?

Appendix M–III–A–3. What is the length of time that potential participants will have to make a decision about their participation in the study?

Appendix M–III–A–4. If the study involves pediatric or mentally handicapped subjects, how will the assent of each person be obtained?

Appendix M–III–B. Informed Consent Document

Investigators submitting human gene transfer proposals must include the Informed Consent document as approved by the local Institutional Review Board. A separate Informed Consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, e.g., when a gene is used as a 'marker' or to enhance the power of immunotherapy for cancer.

Because of the relative novelty of the procedures that are used, the potentially irreversible consequences of the procedures performed, and the fact that many of the potential risks remain undefined, the Informed Consent document should include the following specific information in addition to any requirements of the DHHS regulations for the Protection of Human Subjects (45 CFR 46). Indicate if each of the specified items appears in the Informed Consent document or, if not included in the Informed Consent document, how those items will be presented to potential subjects. Include an explanation if any of the following items are omitted from the consent process or the Informed Consent document.

Appendix M–III–B–1. General Requirements of Human Subjects Research

Appendix M–III–B–1–a. Description/Purpose of the Study

The subjects should be provided with a detailed explanation in non-technical language of the purpose of the study and the procedures associated with the conduct of the proposed study, including a description of the gene transfer component.

Appendix M–III–B–1–b. Alternatives

The Informed Consent document should indicate the availability of therapies and the possibility of other investigational interventions and approaches.

Appendix M–III–B–1–c. Voluntary Participation

The subjects should be informed that participation in the study is voluntary and that failure to participate in the study or withdrawal of consent will not result in any penalty or loss of benefits to which the subjects are otherwise entitled.

Appendix M–III–B–1–d. Benefits

The subjects should be provided with an accurate description of the possible benefits, if any, of participating in the proposed study. For studies that are not reasonably expected to provide a therapeutic benefit to subjects, the

Informed Consent document should clearly state that no direct clinical benefit to subjects is expected to occur as a result of participation in the study, although knowledge may be gained that may benefit others.

Appendix M–III–B–1–e. Possible Risks, Discomforts, and Side Effects

There should be clear itemization in the Informed Consent document of types of adverse experiences, their relative severity, and their expected frequencies. For consistency, the following definitions are suggested: side effects that are listed as mild should be ones which do not require a therapeutic intervention; moderate side effects require an intervention; and severe side effects are potentially fatal or life-threatening, disabling, or require prolonged hospitalization.

If verbal descriptors (e.g., ''rare,'' ''uncommon,'' or ''frequent'') are used to express quantitative information regarding risk, these terms should be explained.

The Informed Consent document should provide information regarding the approximate number of people who have previously received the genetic material under study. It is necessary to warn potential subjects that, for genetic materials previously used in relatively few or no humans, unforeseen risks are possible, including ones that could be severe.

The Informed Consent document should indicate any possible adverse medical consequences that may occur if the subjects withdraw from the study once the study has started.

Appendix M–III–B–1–f. Costs

The subjects should be provided with specific information about any financial costs associated with their participation in the protocol and in the long-term follow-up to the protocol that are not covered by the investigators or the institution involved.

Subjects should be provided an explanation about the extent to which they will be responsible for any costs for medical treatment required as a result of research-related injury.

Appendix M–III–B–2. Specific Requirements of Gene Transfer Research

Appendix M–III–B–2–a. Reproductive Considerations

To avoid the possibility that any of the reagents employed in the gene transfer research could cause harm to a fetus/child, subjects should be given information concerning possible risks and the need for contraception by males and females during the active phase of the study. The period of time for the use of contraception should be specified.

The inclusion of pregnant or lactating women should be addressed.

Appendix M–III–B–2–b. Long-Term Follow-Up

To permit evaluation of long-term safety and efficacy of gene transfer, the prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. The Informed Consent document should include a list of persons who can be contacted in the event that questions arise during the follow-up period. The investigator should request that subjects continue to provide a current address and telephone number.

The subjects should be informed that any significant findings resulting from the study will be made known in a timely manner to them and/or their parent or guardian including new information about the experimental procedure, the harms and benefits experienced by other individuals involved in the study, and any long-term effects that have been observed.

Appendix M–III–B–2–c. Request for Autopsy

To obtain vital information about the safety and efficacy of gene transfer, subjects should be informed that at the time of death, no matter what the cause, permission for an autopsy will be requested of their families. Subjects should be asked to advise their families of the request and of its scientific and medical importance.

Appendix M–III–B–2–d. Interest of the Media and Others in the Research

To alert subjects that others may have an interest in the innovative character of the protocol and in the status of the treated subjects, the subjects should be informed of the following: (i) that the institution and investigators will make efforts to provide protection from the media in an effort to protect the participants' privacy, and (ii) that representatives of applicable Federal agencies (e.g., the National Institutes of Health and the Food and Drug Administration), representatives of collaborating institutions, vector suppliers, etc., will have access to the subjects' medical records.

Appendix M–IV. Privacy and Confidentiality

Indicate what measures will be taken to protect the privacy of patients and their families as well as to maintain the confidentiality of research data.

Appendix M–IV–A. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed.

Appendix M–IV–B. What provisions will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

Appendix M–V. Special Issues

Although the following issues are beyond the normal purview of local Institutional Review Boards, investigators should respond to the following questions:

Appendix M–V–A. What steps will be taken, consistent with Appendix M–IV, Privacy and Confidentiality, to ensure that accurate and appropriate information is made available to the public with respect to such public concerns as may arise from the proposed study?

Appendix M–V–B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

Appendix M–VI. RAC Review—Human Gene Transfer Protocols

Appendix M–VI–A. Categories of Human Gene Transfer Experiments That Require RAC Review

Factors that may contribute to the necessity for RAC review include, but are not limited to: (i) new vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that RAC review is deemed necessary by the NIH and FDA, the proposal will be forwarded to the RAC primary reviewers for evaluation. In order to maintain public access to information regarding human gene transfer protocols, NIH/ORDA will maintain the documentation described in Appendices M–I through M–V (including protocols that are not reviewed by the RAC).

Appendix M–VI–B. RAC Primary Reviewers' Written Comments

In the event that NIH/ORDA and/or the FDA recommend RAC review of the submitted proposal, the documentation described in Appendices M–I through

M–V will be forwarded to the RAC primary reviewers for evaluation.

The RAC primary reviewers shall provide written comments on the proposal to NIH/ORDA. The RAC primary reviewers' comments should include the following:

Appendix M–VI–B–1. Emphasize the issues related to gene marking, gene transfer, or gene therapy.

Appendix M–VI–B–2. State explicitly whether Appendices M–I through M–V have been addressed satisfactorily.

Appendix M–VI–B–3. Examine the scientific rationale, scientific context (relative to other proposals reviewed by the RAC), whether the preliminary *in vitro* and *in vivo* data were obtained in appropriate models and are sufficient, and whether questions related to safety, efficacy, and social/ethical context have been resolved.

Appendix M–VI–B–4. Whenever possible, criticisms of Informed Consent documents should include written alternatives for suggested revisions for the RAC to consider.

Appendix M–VI–B–5. Primary reviews should state whether the proposal is: (i) acceptable as written, (ii) expected to be acceptable with specific revisions or after satisfactory responses to specific questions raised on review, or (iii) unacceptable in its present form.

Appendix M–VI–C. Investigator's Written Responses to RAC Primary Reviewers

Appendix M–VI–C–1. Written responses (including critical data in response to RAC primary reviewers' written comments) shall be submitted to NIH/ORDA greater than or equal to 2 weeks following receipt of the review.

Appendix M–VI–D. Oral Responses to the RAC

Investigators shall limit their oral responses to the RAC only to those questions that are raised during the meeting. Investigators are strongly discouraged from presenting critical data during their oral presentations that was not submitted greater than or equal to 2 weeks in advance of the RAC meeting at which it is reviewed.

Appendix M–VI–E. RAC Recommendations to the NIH Director

The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be transmitted to the FDA Commissioner and considered as a Major Action by the NIH Director.

Appendix M–VII. Categories of Human Gene Transfer Experiments That May Be Exempt From RAC Review

A proposal submitted under one of the following categories may be considered exempt from RAC review unless otherwise determined by NIH/ORDA and the FDA on a case-by-case basis (see Appendix M–VI–A, Categories of Human Gene Transfer Experiments that Require RAC Review).

**Note:** In the event that the submitted proposal is determined to be exempt from RAC review, the documentation described in Appendices M–I through M–V will be maintained by NIH/ORDA for compliance with semiannual data reporting and adverse event reporting requirements (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols). Any subsequent modifications to proposals that were not reviewed by the RAC must be submitted to NIH/ORDA in order to facilitate data reporting requirements.

Appendix M–VII–A. Vaccines

This category includes recombinant DNA vaccines not otherwise exempt from RAC review (see Appendix M–IX–A for exempt vaccines).

Appendix M–VII–B. Lethally Irradiated Tumor Cells/No Replication-Competent Virus

This category includes experiments involving lethally irradiated tumor cells and: (1) Vector constructs that have previously been approved by the RAC (or with the incorporation of minor modifications), or (2) a different tumor cell target.

Appendix M–VII–C. New Site/Original Investigator

This category includes the following: (1) Initiation of a protocol at an additional site other than the site that was originally approved by the RAC, and (2) the investigator at the new site is the same as the investigator approved for the original study.

Appendix M–VII–D. New Site/New Investigator

This category includes the following: (1) Initiation of a protocol at an additional site other than the site that was originally approved by the RAC, and (2) the investigator at the new site is different than the investigator approved for the original site.

Appendix M–VII–E. ''Umbrella'' Protocols

This category includes initiation of a RAC-approved protocol at more than one additional site (the Principal Investigator may be the same or different than the Principal Investigator approved for the original site).

Appendix M–VII–F. Modifications Related to Gene Transfer

This category includes experiments involving a modification to the clinical protocol that is not related to the gene transfer portion of study.

Appendix M–VII–G. Gene Marking Protocols

This category includes human gene marking experiments involving vector constructs that have previously been approved by the RAC and: (1) Minor modifications to the vector constructs, or (2) a different tumor cell target.

Appendix M–VIII. Reporting Requirements—Human Gene Transfer Protocols

Appendix M–VIII–A. Semiannual Data Reporting

Investigators who have received approval from the FDA to initiate a human gene transfer protocol (whether or not it has been reviewed by the RAC) shall be required to comply with the semiannual data reporting requirements. Semi-annual Data Report forms will be forwarded by NIH/ORDA to investigators. Data submitted in these reports will be evaluated by the RAC, NIH/ORDA, and the FDA and reviewed by the RAC at its next regularly scheduled meeting.

Appendix M–VIII–B. Adverse Event Reporting

Investigators who have received approval from the FDA to initiate a human gene transfer protocol (whether or not it has been reviewed by the RAC) must report any serious adverse event immediately to the local IRB, IBC, NIH Office for Protection from Research Risks, FDA, and NIH/ORDA, followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, (301) 496–9838.

Appendix M–IX. Footnotes of Appendix M

Appendix M–IX–A. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not

expected, may be initiated without RAC review if approved by another Federal agency.

## X. Discussion on Adenoviral Vector Toxicology

On January 19, 1995, Dr. Philip Noguchi, Food and Drug Administration, Rockville, Maryland, requested the Recombinant DNA Advisory Committee discuss adenoviral vector toxicology. In his letter, he states:

''The RAC has correctly identified an emerging issue in terms of preclinical toxicities of adenoviral vectors given parenterally. From the FDA's point of view, the area of biotoxicology is an evolving one that has been one of FDA's main tools for determining dosing in gene therapy clinical trials. For gene therapies, most preclinical toxicology studies to date with retroviral and adenoviral vectors have not revealed toxicities of the magnitude seen recently. While the newest results are indeed significant, from the FDA's point of view, animal toxicity is the primary means of estimating safe starting doses in human trials. Thus, lack of overt or major preclinical toxicity is not comforting, but instead raises the specter of unanticipated adverse events in humans. The unexpected adverse event in a cystic fibrosis patient given an adenoviral vector is a case in point. The FDA would like to have one of its toxicologists present a fifteen minute overview of our current philosophy and testing requirements. This would be followed by a short presentation by a patient who will give a perspective on safety concerns in the real world of cancer therapy.''

## XI. Discussion on Adenoviral Vector Toxicology

On January 19, 1995, Dr. Philip Noguchi, Food and Drug Administration, Rockville, Maryland, requested the Recombinant DNA Advisory Committee to discuss transgenic xenotransplantation. In his letter, he states:

''Millions of Americans suffer tissue loss or end-stage organ failure, leading to over eight million surgical procedures annually. Current therapies include organ transplantation, surgical reconstruction using human tissues, and use of mechanical devices such as kidney dialysis machines. These treatments have significantly reduced the morbidity and mortality associated with tissue loss and end-stage organ failure. Transplantation as curative or live-saving therapy, however, is greatly hampered by a critical donor shortage. For example, over 40,000 patients die from liver failure annually yet only 4,000 donors are available annually to address this need for lifesaving organs. The number of patients who die while on waiting lists for organ transplantation is increasing while the availability of donor organs is decreasing. Novel combination products used as bridging mechanisms may extend patients' lives and increase the number of patients on organ transplant waiting lists. The unmet demand for clinically needed human tissues coupled with the scientific and biotechnological progress during the past decade have also provided the impetus for new therapies involving xenogeneic cells, tissues, and organs.

''The FDA has become aware through the press and personal contacts that some Institutional Review Boards are reviewing proposals for xenotransplantation. Although it appears that most of the current proposed protocols seek to use nonhuman primate donors with conventional patient immunosuppression, a growing number of academic and commercial groups are exploring the use of transgenic animals in which human genes are introduced into the animal in an attempt to lower or mask immunogenicity. This latter category is a form of human gene transfer, since the transplanted transgenic organs contain human genes and/or human gene products. The RAC review process has served society well in the measured public introduction of gene therapies into clinical experimentation. We suggest that this exciting new area, in which genetic engineering is further extended to the manipulation and construction of new therapeutic entities, would likewise benefit from regular scientific, legal and ethical review in a public forum.

''Some issues for public discussion might include: (1) Preclinical: What kind of animal model testing would be needed before initiation of transgenic xenotransplantation? What would be the most appropriate animal model? What degree of scientific rationale is necessary? (2) Recipient issues: Should categories of patients be defined for first experimentation? Those who are acutely dying with no immediate human organ available? Those whose priority is so low that the patient would die before receiving an organ? What kinds of patient screening and follow-up would be needed? (3) Hazards: What type of donor screening should be conducted? What new hazards might be created with transgenic transplantation, i.e., activation of a latent human virus in the animal organ? How could these concerns be addressed, i.e. specific scientific studies? (4) Informed consent and study results: What new elements of informed consent would be required? How can the field be monitored for success and failure? Should the local IRBs take the lead in primary monitoring of patient safety? Would the data monitoring efforts used for gene therapies be useful in this new field?

''Obviously, we do not expect that definitive answers to these questions and issues would be forthcoming at the meeting, but we would like to broach the subject so that future discussions can be planned. We suggest that the RAC might wish to augment its current panel with one or more ad hoc consultants with specific expertise in transplantation.''

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

**Suzanne Medgyesi-Mitschang,**

*Acting Deputy Director for Science Policy and Technology Transfer.*

[FR Doc. 95–2870 Filed 2–7–95; 8:45 am]

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federal register

Wednesday
February 8, 1995

# Part III

# Department of Transportation

## Office of the Secretary

## 33 CFR Part 137

## Limit of Liability for Deepwater Ports; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**33 CFR Part 137**

**RIN 2105–AC01**

## Limit of Liability for Deepwater Ports

**AGENCY:** Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Transportation proposes to establish a limit of liability for deepwater ports in general and for the Louisiana Offshore Oil Port (LOOP) specifically. These limits apply only to certain negligent oil spills for which a deepwater port would be entitled to limit its liability under section 1004 of the Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 2704). The proposed limits do not alter a deepwater port's unlimited liability for spills caused by gross negligence, willful misconduct, or violation of certain Federal regulations. LOOP is the only U.S. deepwater port in operation at this time; specific liability limits for other, future deepwater ports will be established through separate rulemakings as necessary.

**DATES:** Comments must be received on or before April 10, 1995.

**ADDRESSES:** Comments may be mailed to Docket 50112, Office of Documentary Services (C–55), U.S. Department of Transportation, PL–401, Northeast Corner, 400 Seventh Street, SW., Washington, DC 20590–0001. To expedite consideration of the Docket, please submit an original and five copies. Certain studies referenced in this notice may be ordered from the National Technical Information Service, Springfield, VA 22161; phone orders (703) 487–4650 (Visa, Mastercard and American Express accepted).

**FOR FURTHER INFORMATION CONTACT:** For general questions, contact Mr. Robert Stein, OST/P–13, at (202) 366–4846. For engineering questions, contact Mr. Thomas Jordan, U.S. Coast Guard OPA 90 Staff, at (202) 267–6751.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

This notice of proposed rulemaking (NPRM) presents three proposed options within a $50 million to $350 million range for LOOP's limit of liability. The Department of Transportation seeks public comment on the issue of limits of liability for deepwater ports in general and LOOP in particular. We have numbered specific discussion paragraphs throughout this NPRM and would appreciate it if commenters would reference those numbers in their responses.

The Department plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Department determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Statutory Basis and Purpose

The purpose of this regulatory action is to establish an appropriate limit of liability for deepwater ports in accordance with section 1004 of OPA 90.

Section 1004 sets the limit of liability for deepwater ports at $350 million. However, it also allows the limit to be adjusted to a lower amount as appropriate (but not less than $50 million), subject to a study of the relative operational and environmental risks of transporting oil to the United States by deepwater ports compared to other ports.

The relative risk study, entitled the ''Deepwater Ports Study,'' has been completed and forwarded to Congress. The study concluded that deepwater ports represent a lower operational and environmental risk for delivering crude oil to the United States than the three other common modes of crude oil delivery (direct vessel deliveries, lightering, and offshore mooring stations).

At present, the only deepwater port in operation in the United States is LOOP. However, other deepwater ports may be built in the future. Because there may be significant engineering and environmental differences between different deepwater ports, the Department has determined that it is necessary to review any deepwater port individually before setting its limit of liability within the statutory limits of $50 million and $350 million. Limits for other deepwater ports may be different from LOOP's limit.

Therefore, in accordance with its authority under section 1004(d)(2)(C) of OPA 90 (33 U.S.C. 2704(d)(2)(C)), and for reasons explained in this preamble, the Department proposes to establish an appropriate limit of liability for LOOP.

### Background and Discussion of Proposed Regulations

*1. Deepwater Ports*

A deepwater port is a man-made offshore marine terminal located in waters deep enough to accommodate Very Large and Ultra Large Crude Carrier tankers (VLCCs and ULCCs) that are too large to enter the local mainland port. A deepwater port marine terminal generally consists of several tanker mooring buoys connected by seafloor pipelines to a nearby pumping platform. The pumping platform is connected by seafloor pipeline(s) to a mainland terminal. A tanker at a mooring buoy pumps its cargo oil to the pumping platform, which then pumps the oil ashore. The marine terminal complex typically contains operating stations, booster pumps, control valves and manifolds, crew accommodations (feeding and berthing), helicopter pad, radar and communication facilities, and on-site pollution response equipment.

Although there are several deepwater ports around the world, at the present time there is only one in the United States: the Louisiana Offshore Oil Port, located in the Gulf of Mexico approximately 18 miles off the Louisiana coast.

*2. Louisiana Offshore Oil Port (LOOP)*

The LOOP deepwater port has been in operation since May, 1981. The total LOOP complex consists of the offshore marine terminal (pumping platform, control platform, and three tanker mooring buoys with pipelines connecting to the pumping platform), the 21-mile offshore pipeline (connecting the marine terminal to a booster station on the beach), the 22-mile onshore pipeline (crossing Mississippi River delta bayous and marshes), an underground salt dome storage facility, and overland pipelines connecting LOOP to various other inland pipeline systems. As defined by the Deepwater Ports Act (Pub. L. 93–627), however, only LOOP's marine terminal (including operations at the terminal) and offshore pipeline are considered to be the actual deepwater port. Therefore, the onshore portions of the complex are not covered by this rulemaking.

LOOP is strictly a crude oil off-loading facility, receiving cargo oil from tankers and pumping it ashore to the Clovelly Dome storage facility. In 1992, crude oil deliveries to LOOP averaged 816,000 barrels per day, accounting for 15 percent of the total amount delivered by vessel to the United States for that year (excluding Alaskan crude oil deliveries).

In the 12 years that LOOP has been in operation a total of 894 barrels of oil have been spilled from the deepwater port portion of LOOP, the largest spill being 399 barrels (from data through December 31, 1992).

*3. Deepwater Ports Study*

Section 1004(d) of OPA 90 directs the Secretary to conduct a study of the relative operational and environmental risks posed by the marine transportation of oil to deepwater ports versus other ports. If that study finds that the risks are lower at deepwater ports, then the Secretary is to initiate a rulemaking that establishes an appropriate level of liability for deepwater ports (but not less than $50 million). The Deepwater Ports Study has been completed and forwarded to Congress. A copy of the study is available for reading in the public docket for this rulemaking, and additional copies may be ordered from the National Technical Information Service (publication number PB94–124054; see **ADDRESSES** section of this notice for more details).

The Deepwater Ports Study examined the four basic modes of delivering crude oil to ports in the United States: (1) Direct vessel deliveries, by tankers small enough to enter U.S. ports directly; (2) lightering, whereby tankers too large to enter port are off-loaded at offshore locations onto smaller tankers or barges that carry the oil cargo into port; (3) offshore mooring stations, whereby tankers moor at a special buoy generally located within two miles of the beach and pump their cargo ashore through seafloor pipelines; and (4) deepwater ports.

The study concluded that crude oil deliveries via deepwater ports represent a lower risk to the environment than the other three delivery modes. This is principally because the delivery tankers remain far offshore, well away from most environmentally-sensitive waters, and because the seafloor pipeline is relatively protected from the kinds of damage that cause large oil spills. Furthermore, the total quantity of oil in the deepwater port's pipeline system is less than the total amount that could be spilled from a single typical tank ship.

*4. Liability for Oil Spill Pollution*

Section 311 of the Federal Water Pollution Control Act, as amended by section 1002 of OPA 90, establishes that parties responsible for oil pollution are liable for all cleanup costs, third-party compensation claims, and natural resource damages as follows:

(a) A responsible party is totally liable (i.e., its liability is unlimited) for spills resulting from gross negligence, willful misconduct, or violation of certain Federal regulations;

(b) A responsible party's liability is limited if the spill is the result of negligence, other than gross negligence, willful misconduct, or violation of certain Federal regulations;

(c) A responsible party is totally absolved from liability for spills caused solely by acts of God, war, unforeseeable acts of third parties (except contractors and so long as the responsible party exercised due care and took precautions against foreseeable acts of third parties), or a combination of the three.

*5. Limits of Liability*

In general, section 1004 of OPA 90 (33 U.S.C. 2704) allows limited liabilities for parties responsible for oil spills under certain circumstances (essentially spills due to negligence other than gross negligence, willful misconduct, or violation of certain Federal regulations). Section 1004(a) sets specific limits for five categories of vessels and facilities: tank vessels, other vessels, onshore facilities, offshore facilities, and deepwater ports. For deepwater ports, the limit of liability was set at $350 million. However, section 1004(d) recognizes that $350 million might be an inappropriately high limit for deepwater ports and requires that, following a study of the relative risks, a rulemaking be initiated for establishing an appropriate liability limit for deepwater ports (but not less than $50 million).

It should be noted that other provisions in section 1004(d) of OPA 90 may also result in future adjustments of limits of liability for all facilities, including deepwater ports. These adjustments may be made from time to time to reflect significant increases in the Consumer Price Index (CPI) since 1990.

*6. Oil Spill Liability Trust Fund*

The Oil Spill Liability Trust Fund (hereafter the ''Pollution Fund'') is a Federally-managed trust fund for several oil pollution-related purposes. It is funded by a 5-cent-per-barrel levy on domestic crude oil and all imported oil (crude and product).

One of the Pollution Fund's more important purposes is to pay cleanup costs, claims, and damages after the responsible party has met its limit of liability for an accidental spill, or in the event that the responsible party is totally absolved from liability (for spills caused by acts of war, God, etc.). This ensures that innocent parties injured by a spill are compensated for their losses, regardless of the responsible party's liability. The Pollution Fund, in turn, is limited in its liability to $1 billion per incident.

*7. Factors for Determining an Appropriate Limit of Lliability*

The Department of Transportation has determined that it is appropriate national policy that the limit of liability for a deepwater port should be sufficiently high enough to cover all costs associated with the maximum credible negligent spill for which the port would be liable. A ''credible accident'' would be one that was the result of negligence other than gross negligence, willful misconduct, or violation of applicable Federal regulations. A facility experiencing a credible accident would have limited liability. Costs for a negligent spill would be borne by the Pollution Fund once the deepwater port has met its limit of liability.

Setting a limit of liability in accordance with this policy entails two studies: a risk analysis of the deepwater port to determine its maximum credible spill, and an economic analysis to determine the costs (cleanup, third party compensation, and natural resource damages) of such a spill.

The risk analysis should consider the following factors:

—Physical layout and condition of the deepwater port,
—On-site spill response capability,
—Spill history of the deepwater port,
—The pipeline leak detection system,
—Section-by-section pipeline analysis of credible spill scenarios, and
—Other spills for which the deepwater port might be solely or jointly liable (such as tanker spills).

The economic analysis should consider:

—Spill trajectories for the maximum credible spill,
—Potential response (cleanup) costs,
—Potential third party damage costs, and
—Potential natural resource damage costs.

*8. Risk Analysis of LOOP*

LOOP does not have any crude oil storage capacity within its legally-defined boundaries as a deepwater port. Therefore, the two largest sources of potential oil spillage for which LOOP might be solely or jointly responsible are its pipeline system, and a tanker calling at the port. Each of these were analyzed in a risk analysis.

Based upon engineering information provided by LOOP concerning the pipeline system and tanker operations at the port, the Coast Guard has prepared a risk analysis of the LOOP deepwater port in order to determine the credible spillages that could occur under accidental circumstances. This analysis, entitled ''Risk Analysis for the Louisiana Offshore Oil Port (LOOP),'' is available in the public docket for this rulemaking.

The risk analysis examined each oil transferring component of the LOOP deepwater port, from the floating hoses that connect the tanker at an SPM to the main oil pipeline connecting the marine terminal to the mainland. For each of these components, the analysis considered all credible accident scenarios that could violate its oiltight integrity. These scenarios included adverse weather, overruns by surface vessels, propeller and anchor damage, material defects or failures, maintenance mishaps, and corrosion leaks. For each scenario the leakage rate, detection time, and consequential oil spillage were determined.

The risk analysis also looked at tanker spill scenarios where LOOP might be solely or jointly responsible for accidental spills from a tanker.

Scenarios based upon damage caused by acts of war, God, or third parties were not evaluated because a deep-water port is not liable for such spills.

*9. LOOP's Pipeline System*

LOOP's pipeline system is designed to transfer crude oil at rates up to 100,000 bph (barrels per hour). However, the actual transfer rate at any given time is dependent upon the cargo pumping capacity of the discharging tanker. Most of the tankers calling at LOOP cannot discharge at the maximum rate; LOOP estimates that the maximum transfer rate actually occurs less than 10 percent of the time.

The pipeline system consists of two floating hoses that connect the tanker to a single-point mooring (SPM) buoy, and a buried 56-inch diameter seafloor pipeline that connects the SPM to the LOOP pumping platform. There are three SPMs at the LOOP marine terminal (but only one at a time actually transfers oil). A 21-mile, 48-inch diameter seafloor pipeline connects the pumping platform to the Fourchon booster station (located 3 miles inland from the beach) and then to the Clovelly Dome storage facility (another 23 miles away). The pipelines are constructed of ½-inch-thick steel. Offshore, the tops of the pipelines are buried at least 4 feet below the seafloor; as the pipeline approaches the beach it is buried even deeper.

The two floating hoses are approximately 1,100 feet long; their volumetric capacity is 570 barrels each. The SPM pipeline is 8,150 feet long; its volumetric capacity is approximately 25,400 barrels. The main oil pipeline is approximately 18 miles long from the marine terminal to the beach; its volumetric capacity is 213,000 barrels. During a transfer operation, the total pressurized pipeline fill from tanker to beach, including the SPM and pumping platform components, is approximately 240,000 barrels (the two other SPMs are not pressurized and are isolated by control valves). By way of comparison, the total cargo capacity of the EXXON VALDEX was 1.6 million barrels.

However, there is no credible accident that can split open any pipeline along its entire length and completely spill its contents. A more creditable scenario is a local rupture or fracture of the pipeline. High leakage rates can only occur while the pipeline is pressurized during transfer operations, when the internal oil pressure is considerably higher than the external mud and seawater pressure. The leakage rate will depend upon (1) The cross-sectional shape and area of the rupture, and (2) the internal or external pressure differential, which may be 200 to 450 psi (pounds per square inch) depending upon how far offshore the leak occurs. The total amount of spillage will depend upon how much time elapses before the leak is detected (or suspected) and the pipeline is shut down and depressurized.

*10. LOOP's Leak Detection System*

LOOP's main oil pipeline (from the offshore marine terminal to the Clovelly Dome storage facility 45 miles away) is computer-monitored by a Supervisory Control And Data Acquisition (SCADA) system which provides flow volume and leak detection service. LOOP's SCADA system consists of 140 temperature, pressure, density, and other sensors that provide oil flow data from three field sites along the pipeline: the marine terminal, the Fourchon booster station, and Clovelly Dome. Each field site has two redundant SCADA computers. Although one computer is designated as primary and the other as backup, both computers are on-line simultaneously and independently process all data. In addition to performing normal data processing, both computers also monitor system integrity to detect any component or system malfunctions (including cross-checking each other several times per minute). Electrical power to the computers and sensors is from uninterruptable power sources (UPSs). The field site computers communicate with the computers at the LOOP Operations Center via microwave transmissions. The SCADA system can immediately detect any pipeline malfunction or anomaly and trigger alarms at the Operations Control Center. The Operations console is manned around the clock with two persons (Oil Movement Controllers, OMCs) whenever oil transfer operations are occurring. From the Operations console, the OMCs can shut down the pipeline by remotely closing various control valves and tripping pumps off-line.

The pipeline sensors are scanned every 3 to 5 seconds by the SCADA computers, which immediately compare them to allowable high and low values. A major rupture of the pipeline system will cause out-of-bounds readings at several different sensors, and trigger alarms at the Operations Control Center.

To detect smaller leaks that do not cause out-of-bounds readings, the SCADA computer also continuously compares the actual metered inflow volume at the marine terminal with the estimated flow volume at various points in the pipeline (as calculated from the sensor data), looking for volumetric discrepancies. Short-term discrepancies of 50 cubic meters (314 barrels) in 13 minutes or 80 cubic meters (503 barrels) in one hour will trigger an alarm. Even smaller leaks will be detected on the basis of long-term discrepancies of 200 cubic meters (1,257 barrels) in 48 hours, based upon the metered inflow at the offshore terminal and the metered outflow at Clovelly Dome. This threshold is the limit of the line surveillance sensitivity.

LOOP investigates a discrepancy by performing calibration checks of the sensors and meters. If these do not reveal any malfunctions or resolve the imbalance, then a special pipeline overflight will be initiated to visually search for any leakage. If necessary, the pipeline can also be pressure-tested in conjunction with the overflight. A pressure test would consist of stopping the oil flow, statically pressurizing the pipeline to 200 psi, and monitoring the pressure for a minimum of 1 hour. Any loss in pressure would indicate a leakage. In its 12-year operating history, LOOP has never had to pressure test the main pipeline due to a volumetric flow discrepancy. (The pipeline has been pressure-tested twice for other reasons not related to volumetric discrepancies, and the floating hose and SPM sections of the pipeline are routinely pressure-tested as part of post-maintenance integrity verification before being put back into service).

In addition to the SCADA system, LOOP also conducts weekly overflights of the entire 45-mile pipeline right-of-way for visual detection of any leaks and to ensure that no unauthorized third-party activity (ashore or afloat) is occurring which may damage the pipeline. Such activity might be a dredging operation in the marshes or an oil drilling rig being positioned in the vicinity of the LOOP pipeline.

The floating hose and SPM seafloor pipeline section between tanker and

pumping platform (approximately one and a half miles) is not directly computer-monitored. A major pipeline rupture along this section will create an abnormal pressure drop at the suction side of the booster pumps on the pumping platform, detectable by the SCADA sensors. Such a pressure drop would also be apparent to personnel on watch in the tanker's cargo control room, who would initiate a shutdown of the tanker's cargo pumps. A minor leak will create a surface slick, visually detectable from the tanker, pumping platform, or service vessels always operating around the Marine terminal. Whenever a tanker is discharging at an SPM, a LOOP service vessel also conducts sunrise and sunset inspections each day along the SPM pipeline and around the tanker.

*11. Major Pipeline Spill Scenarios*

Major pipeline spill scenarios are based upon total severance of the pipeline during a full-capacity transfer operation at 100,000 bph flow rate. There are two points in the pipeline system where maximum spills could occur: Severance of the main oil pipeline (which connects the terminal to shore), and severance of a floating hose (that connects the tanker to the SPM).

*(a) Severance of main oil pipeline:* The scenario assumed complete severance and offset of the pipeline by 48 inches, allowing full, unimpeded discharge from the severed end. This severance was assumed to occur at the midway point (56,000 feet) between the marine terminal and the Fourchon booster station, which is the furthest distance (10.6 miles) from any of the SCADA sensors. This represents the longest time delay (16 seconds) before the transient pressure wave would reach a sensor. The water depth at that point is 50 to 60 feet, well within the working range of divers to effect repairs.

The failure analysis determined that, within 24 seconds of the rupture, the SCADA computer would identify abnormal pressure data at both the marine terminal and Fourchon booster station sensors and trigger alarms at the LOOP Operation Control Center. Full system shutdown (tripping booster pumps off-line, hydraulically closing control valves, and depressurization of the pipeline) would be accomplished in 3 minutes from rupture. The estimated spillage during this shutdown period would be 2,785 barrels.

After shutdown, and because its density is heavier than crude oil, seawater will begin to flow into the ''offshore'' ruptured pipemouth, displacing an equal volume of crude oil out of the pipe. Because the seafloor gradient is nearly flat (110 feet of water depth over 18 miles of pipeline length), this will be a low-energy displacement process. For the first few minutes after rupture the displacement rate will be approximately 1,366 bph, but will slow down rapidly as the seawater intrudes deeper into the pipeline and must overcome the increasing resistance (viscosity and other frictional losses) of displacing oil back out of the pipe. After 14 minutes the displacement rate would be approximately 877 bph, and after 5 hours it would be approximately 367 bph. Over a 5-hour period it is estimated that the seawater will intrude approximately 2,150 feet into the pipeline, displacing 2,409 barrels of crude oil.

Depressurization of the ''onshore'' pipeline (from rupture to Clovelly Dome 33 miles away) would take 51 seconds, during which time approximately 500 barrels of seawater will be sucked into the ruptured pipemouth. LOOP would keep the shoreside pumps on line in order to maintain suction on the pipeline and continue drawing in seawater; 30 minutes of this suction would assure a full water plug in the pipeline, precluding any oil backflow out of that ruptured pipemouth (a full water plug would be approximately 3,868 barrels).

In the meantime, LOOP will also activate its response plan for locating and plugging a pipeline rupture. LOOP maintains a service vessel and a team of divers continuously on-duty at the marine terminal. The service vessel can transit the 18-mile offshore distance in less than 2 hours, following the pipeline and searching for the surface slick. Once located, divers would be able to temporarily seal off the open pipemouth within 3 hours. Complete repairs to the pipeline would be accomplished without further spillage, using pipe stoppling and repair techniques already developed by industry.

Therefore, the maximum spillage expected from severance of the main oil pipeline is not more than 5,194 barrels.

*(b) Severance of a floating hose:* Two 24-inch ID floating hoses connect the tanker to the pipeline manifold located on the seafloor at the base of the SPM. Each hose string is designed for a flow rate of 50,000 bph, and is approximately 1,100 feet long, made up of 24 to 26 hoses bolted together. The wall construction of a hose is an inner liner of ¼-inch-thick rubber, surrounded by ¾ inches of multi-ply cord reinforcement (either steel wire or poly cord), two helix windings of ½-inch steel wire, a ¼-inch outer liner, and a ¼-inch reinforced rubber covering.

Total severance of a floating hose would cause a substantial pressure drop in the pipeline. This pressure drop would be detected by the SCADA sensors at the suction side of the booster pumps on the pumping platform, triggering alarms at the LOOP operations center. Simultaneously, the pressure drop would also be apparent to the cargo officer in the pump room aboard the tanker. The risk analysis determined that emergency shutdown and depressurization would take 3 minutes (1 minute for failure recognition, 2 minutes to trip pumps offline and close control valves on the tanker and SPM manifolds). Pressurized outflow during that period is estimated to be 1,667 barrels. Assuming complete volumetric loss of the hose contents itself (570 barrels) and the SPM manifold (96 barrels), the total spillage would be 2,333 barrels.

*12. Other Pipeline Spills*

The leak detection thresholds of the SCADA system are 314 barrels within 13 minutes, 503 barrels within 1 hour, and 1,257 barrels within 48 hours. Thus, the SCADA system is expected to detect any leak of 26 bph or more, for a maximum spillage of 1,257 barrels before discovery.

Leaks of a lesser rate would be below the detection level of the SCADA system and would therefore have to be detected visually as surface slicks, discovered from service vessels or overhead flights. Because of the high level of service vessel activity around the port, the risk analysis assumes that surface slicks within the LOOP safety zone will be discovered within 24 hours. Because of the high level of aviation (helicopter) activity around the waters of the Gulf, the risk analysis assumes that slicks in open water will be discovered within 72 hours. These discovery time delays are conservatively long, allowing for periods of night (when visual detection is unlikely) and also recognizing that small leaks from a seafloor pipeline (in 100 feet of water) may be thinly dispersed, and therefore more difficult to notice, by the time the oil reaches the surface. However, once discovered, leakages would be reduced to trickle amounts by shutting down and depressurizing the pipeline.

The LOOP risk analysis determined that small pipeline spills could result from corrosion pits, failure of bolted connections (gasket or flange leaks), lesser pipeline ruptures, or maintenance mishaps.

Leakage from corrosion pits in the pipeline would depend upon the size of the corrosion hole and the oil pressure within the pipeline. Initially, the hole

would be no more than a pinhole in size, but would enlarge over time. The leakage rate from a ⅛-inch diameter hole at a pressure of 172 psi would be 6 bph. If the leak occurred within the safety zone (i.e., discovered within 24 hours), spillage would be no more than 144 barrels. If the leak occurred in open water somewhere between terminal and shore (i.e., discovered within 72 hours), spillage would be no more than 432 barrels.

Total failure of a bolted connection (i.e., complete separation) is considered unlikely because of the number of bolts involved. More-likely are partial failures resulting in gasket or flange leaks; at normal working pressures, leakage rates are estimated to be 8 bph. All bolted pipeline connections are within the safety zone; therefore, leaks would be discovered within 24 hours. A leaking connection from a floating hose might spill 204 barrels before discovery. However, many of the bolted connections are on the tanker or pumping platform where leaked oil would be contained by spill coamings or troughs and discovered during normal watchkeeping rounds.

Another possible spill source would be from a floating hose if run over by a service craft or fishing vessel that slashes the hose with its propellers. The risk analysis determined that the steel-reinforced wall construction of the hoses makes it unlikely that they could be fully severed by the propellers of service vessels. Rather, a slash might penetrate through the inner wall of the hose. Such a slash would leak only when the pipeline was pressurized; total leakage is estimated to be not more than 165 barrels.

The largest maintenance accident would be spillage of the entire contents of a floating hose and the SPM base (approximately 667 barrels).

*13. Tanker Spill Analysis*

OPA 90 relieves a deepwater port of any liability for tanker spills caused solely by the tanker. Thus, LOOP is not responsible for spills solely caused by malfunctioning tanker equipment (such as valves or seachests), or human error by tanker personnel (such as discharge of oily bilgewater), or from other accidents aboard the tanker (such as fire or explosion) which are not caused by LOOP.

For most of the time during its call at LOOP, a tanker is under sole command and control of its master and officers, who are responsible for safe operation and maintenance of their vessel and its equipment, and for compliance with all applicable Federal regulations. However, there are certain tanker spill scenarios for which LOOP might be liable (solely, or jointly with the tanker). These scenarios arise during those periods when the tanker is under joint navigational responsibility of LOOP and its own master, or joint transfer responsibility during discharge of the tanker's cargo oil. Because of these joint responsibility situations, LOOP's potential liability for a tanker spill must be reviewed as part of this rulemaking.

*14. Navigation-Related Tanker Spill*

Joint navigational responsibility exists when the tanker is maneuvering within the port's safety zone under direction of LOOP's Vessel Traffic Controller, or is maneuvering to or from the SPMs with the LOOP mooring master on board. (Although LOOP reports that the mooring masters are independent contractors to LOOP, OPA 90 does not limit or relieve the liability of a responsible party for acts or omissions by its agents or contractors.)

The most serious navigation-related accident that could occur at a deepwater port would be a collision between a tanker and another tanker or platform. A possible cause for such a collision could be mechanical failure of the tanker's steering system. In 1990, LOOP conducted a risk analysis that examined steering and propulsion failure scenarios of tankers maneuvering around the safety zone. As a result of this study, LOOP contracted a purpose-built tractor tug that is specifically designed for controlling disabled tankers. This tractor tug, the LOOP RESPONDER, has been in service at LOOP since 1992.

Lesser navigation-related tanker spills, resulting from bona fide accidents where LOOP might be found solely or jointly liable, are more possible. One of these is a mooring overrun where the tanker runs over the SPM while maneuvering to or from the buoy. The risk analysis determined that the worst-case outcome for a mooring overrun would be severance of the two floating hoses, spilling a maximum of 209 barrels. Because of the slow tanker speeds during mooring and unmooring operations (less than 5 knots), and the heavy fendering arrangements on the SPM buoy, rupture of the tanker's hull (by impact with the SPM buoy) is not expected.

Another possible accident is a collision between a service vessel and a tanker. Once again, however, the tanker hull is not expected to be ruptured because of the slow relative speeds and fendering arrangements on the service vessels.

The risk analysis concluded that it was not possible to predict a maximum spill size from an accident involving a tanker. This is because there are too many circumstances and variables that influence the outflow. However, it is unlikely that such accidents could occur without being in violation of Federal regulations, particularly those governing tanker movements within the safety zone. In such a case, the responsible party (LOOP or the tanker) would not be allowed to limit its liability, regardless of the limits established by this rulemaking.

*15. Transfer-Related Tanker Spill*

Joint transfer responsibility occurs when the tanker operates its cargo pumping system in response to directions from LOOP's Oil Movement Controller. A tanker spill during transfer operations is expected to be associated with the bolted connections where LOOP's floating hoses connect to the tanker's cargo manifold. Because LOOP furnishes the gaskets and bolts used in making the connection, and oversees the bolting and unbolting of the hoses, LOOP is potentially liable for any spillage from the connection.

The risk analysis determined that complete failure (separation) of the bolted connection was improbable because of the size and number of bolts used. It is more likely that spills would be caused by leaks resulting from a poorly-sealed connection. The risk analysis determined that such spills would be less than 10 barrels (the most serious being the result of a gasket failure).

*16. Historical Spill Costs*

At this time there is no economic model for projecting costs of an oil spill along the Louisiana Gulf coast. There have been some recent crude oil spills in those waters, but the final costs are not yet known. Accordingly, estimating the cost of a maximum credible spill must be done from broader historical data on U.S. spills.

The Coast Guard and Volpe National Transportation Systems Center (TSC) commissioned the Unisys Corporation and Mercer Management, Inc. to study and develop oil spill cleanup costs, third-party compensation, and natural resource damage data.

The results are presented in the draft Interim Report ''OPA 90: Regulatory Impact Analysis Review—Spill Unit Values,'' dated September 15, 1992. The study researched all tank vessel oil spills of over 100,000 gallons (2,381 barrels) that occurred in U.S. waters between 1980 and 1990. The study's oil spill database contains cost information for some 59 incidents, representing 76 percent of the total volume spilled from

1980 to 1990, and 89 percent of all oil spilled in incidents of at least 100,000 gallons. Although cleanup costs and third-party damages are well documented, natural resource damage settlements are relatively few.

The study determined that location of a spill was a significant factor in cleanup and third party costs. For example, the weighted average cost for a dirty product spill in internal or headland waters was $41,652 per metric ton but only $8,364 per metric ton for spills 12 to 200 miles offshore (costs in 1992 dollars for U.S. spills 1980–1990, weighted by spill size). The study developed a range of unit cost values for ''clean'' and ''dirty'' product spills. For dirty product spills, which would include crude oil, the range of unit values was from $121 to $264 per gallon ($5,082 to $11,088 per barrel).

It is noted that several recent spills are in the process of litigation or settlement, and may therefore provide more-current cost data by the time of the final rule for this rulemaking. Accordingly, the Department may find it appropriate to use the more current cost data for its limit of liability determination.

*17. LOOP's certification of financial responsibility*

Under the original Deepwater Port Act of 1974 (DPA), the deepwater port had a liability limit of $50 million except for spills caused by gross negligence or willful misconduct, whereupon liability was unlimited. Section 18 of the DPA required the deepwater port to ''carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by [the DPA].'' In 1980, LOOP and the Department of Transportation signed a memorandum of understanding (MOU) which established that LOOP must provide annually evidence of financial responsibility in the amount of $150 million. The MOU outlines a two-part requirement: that LOOP must maintain 1) a net worth, including fixed assets, of $50 million, and 2) a combination of working capital and insurance totalling $100 million (after deducting any claims and insurance deductibles). Shortfalls in these minimum levels must be made up with insurance. Thus, the MOU established a minimum financial worth of LOOP of $150 million. LOOP submits quarterly reports to the Department demonstrating that it is meeting the minimum requirements as set forth in the MOU. Although OPA 90 revised the DPA (specifically deleting section 18) and established a new liability limit at $350 million, the terms of the MOU are still being observed, pending the outcome of this rulemaking.

Adoption of a $150 million liability limit would confirm DOT's past requirement for LOOP's financial responsibility. DOT's assessment was that $150 million would suffice for most oil spills. A liability limit in the $150 million range would not cause additional expense for LOOP.

*18. Background on the $350 million statutory limit on liability for negligence*

OPA 90, Section 1004, establishes a liability limit of $350 million ''for any onshore facility and a deepwater port.'' In the context of the Exxon Valdez oil spill which significantly influenced the shaping of OPA 90, Congress decided that the $350 million level of liability fitted into the other liability provisions of OPA 90, in particular the liability for tank vessels. The Congress believed that the risk of oil spills of deepwater ports warranted a $350 million limit and it believed that insurance would be available to support liability up to this level. For damages above the $350 million limit OPA granted the deepwater ports the benefit of payment of the damage claims out of the Oil Spill Liability Trust Fund. Deepwater ports have been subject to this level of liability for their negligence since 1990.

In OPA 90, Section 1004(d), Congress gave the Executive Branch authority to adjust the liability limit for onshore and deepwater port facilities downwards if such an adjustment could be justified. The assumption of OPA 90 is that the liability limit set by the law remains as provided by the statute, unless good reason can be established for a lower limitation. At this time, the limit of liability for onshore facilities remains at $350 million.

Congress did not require the Executive Branch to study adjustment of the limit for onshore facilities within any specific time limit. The authority to study may be used at any time. However, in regard to deepwater ports, OPA 90 requires a study of oil spill risks in one year after enactment of OPA 90. The results of that study are described elsewhere in this NPRM. Thus the question becomes whether the DOT study has uncovered new information which would cause the Secretary to establish liability limits lower than those established by Congress. If new information of sufficient weight and magnitude showing that the risk of ''transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports,'' then the Secretary may initiate rulemaking to find the level of liability which is more appropriate than the level established by the statute.

*19. Proposed § 137.603 Limit of Lability*

The Department has determined that it is not appropriate to assign a single, universal limit of liability for all deepwater ports. Rather, a limit should be set individually for each deepwater port, on the basis of its design, location, spillage risk, and estimated costs (clean up costs, third party compensation, and natural resource damages). Therefore, through this proposed rule, the Secretary of Transportation would establish an appropriate limit of liability for negligence, between the statutory limits of $350 million and $50 million, for individual deepwater ports.

Although the regulatory text section of this NPRM proposes a range of possible limits of liability for LOOP ($50–$350 million), the Department is particularly focusing on three possible limits, as follows:

(1) Maintain the present limit of liability for negligence at $350 million, as established by OPA 90; or

(2) Establish a limit of liability for negligence at $58 million, based on LOOP's maximum pipeline spill of 5,194 barrels and the TSC recommended worst-case cost of $11,088 per barrel for dirty product spills; or

(3) Establish a limit of liability for negligence at $150 million, reflective of the 1980 memorandum of understanding between the Department and LOOP. It reflects DOT's risk assessment in 1980, based upon the TSC range of spill unit costs for dirty products ($5,082 to $11,088 per barrel), this limit of liability would provide for a spill of 13,500 barrels to 29,500 barrels.

The Department presents these three limits, but may select a limit within the $50–$350 million range in the final rule after reviewing specific public comments on these limits. Additionally, the Department seeks comments on whether it should reassess and possibly readjust the liability limit at fixed time intervals.

It is reiterated here that the unlimited liability provisions of the law are not affected by this rulemaking. LOOP would not be allowed to limit its liability for spills caused by gross negligence, willful misconduct, or violation of certain Federal regulations in accordance with section 1004 of OPA 90 (33 U.S.C. 2704).

## Regulatory Analysis and Notice

### DOT Regulatory Policies and Procedures

This NPRM is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11040, because of substantial industry interest.

### Executive Order 12866

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12866, and it has been determined that it is not an economically significant rulemaking.

### Executive Order 12612

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

### Regulatory Flexibility Act

The Department must consider whether this proposal will have a significant impact on a substantial number of small entities.

This proposal only affects a single company, Louisiana Offshore Oil Port (LOOP), Inc., which owns and operates the only deepwater port in the United States at present. Neither LOOP specifically, nor deepwater ports in general, qualify as small business concerns. Accordingly, the Department has determined that this proposal does not affect any small business entities.

If a company affected by the proposed regulations thinks it qualifies as a small entity, and that the proposed regulations will have an adverse economic impact, then it should submit a comment (see **ADDRESSES**) explaining why it qualifies as a small entity, and in what way and to what degree the proposed regulations will affect it.

### Paperwork Reduction Act

This NPRM contains no collection of information requirements under the Paperwork Reduction Act.

### Assessment

The original Deepwater Port Act of 1974 (DPA) (33 U.S.C. 1501, *et seq.* and 43 U.S.C. 1333) set the limit of liability for a deepwater port at $50 million, except for unlimited liability for spills caused by gross negligence or willful misconduct. Under a 1980 Memorandum of Understanding (MOU) between LOOP and the Department of Transportation, LOOP has been periodically certifying to the Department that it is maintaining a combined total of $150 million of insurance, working capital and net worth. This is the amount that the Department determined to be necessary to ensure that LOOP could meet all of its liabilities (limited and unlimited) in accordance with the DPA.

OPA 90 established a new, $350 million limit of liability for the negligence of deepwater ports, but allows for the Secretary to set lower limits as appropriate (but not less than $50 million). This NPRM presents three proposed limits of liability under consideration for the LOOP deepwater port within the range $50–$350 million: (1) $350 million (the status quo limit set by OPA 90), (2) $58 million (based upon the worst-case cost of maximum pipeline spill), and (3) $150 million (reflective of the total financial worth requirement per the MOU).

Selecting either the $58 million or $150 million options would have minimal economic effect because LOOP is already required to maintain a minimum worth of $150 million. Selecting the $350 million may or may not have an impact on LOOP, depending upon its present net worth, working capital, and insurance coverage. None of the options, regardless of which one is selected, is likely to affect the general private sector, consumers, or Federal, state or local governments. Accordingly, the anticipated impact of this proposal is considered so minimal that it does not warrant a full regulatory assessment or evaluation.

### National Environmental Policy Act

The Department has determined that this rulemaking is administrative in nature and therefore is categorically excludable from further environmental assessment.

### List of Subjects in 33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution.

For the reasons set out in the preamble, the Department proposes to amend 33 CFR part 137 as follows:

**SUBCHAPTER M—MARINE POLLUTION FINANCIAL RESPONSIBILITY AND COMPENSATION**

## PART 137—DEEPWATER PORT LIABILITY FUND

1. The authority citation for 33 CFR part 137 is revised to read as follows:

**Authority:** 33 U.S.C. 1509(a), 1512(a), 1517(j)(1)), 2704; 49 CFR 1.46.

2. Subpart G is added as follows:

**Subpart G—Limits of Liability**

Sec.
137.601 Purpose.
137.603 Limits of Liability

## Subpart G—Limits of Liability

### § 137.601 Purpose.

(a) This subpart sets forth the limits of liability for U.S. deepwater ports in accordance with section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704).

(b) In general, the limits of liability for U.S. deepwater ports will be established by the Secretary of Transportation on a port-by-port basis, after reviewing a spill risk analysis and associated costs for which the port could be liable. The limit for negligence of the deepwater port will not be less than $50 million or more than $350 million.

### § 137.603 Limits of Liability.

(a) The limit of liability for negligence of the deepwater port licensed and operated by Louisiana Offshore Oil Port (LOOP), Inc., is (range $50,000 to $350,000).

(b) [Reserved]

Dated: February 2, 1995.

**Federico Peña,**

*Secretary of Transportation.*

[FR Doc. 95–3039 Filed 2–3–95; 8:45 am]

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February 8, 1995

# Part IV

# Resolution Trust Corporation

## 12 CFR Part 1617

## Minority and Women Owned Business and Law Firm Program; Final Rule

## RESOLUTION TRUST CORPORATION

### 12 CFR Part 1617

**RIN 3205–AA08**

### Minority and Women Owned Business and Law Firm Program

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Resolution Trust Corporation (RTC) hereby promulgates a final rule implementing section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), section 401 of the RTC Refinancing, Restructuring and Improvement Act of 1991 (RRIA) and section 21A(w) of the Federal Home Loan Bank Act (FHLBA), which was added by section 3(a) of the Resolution Trust Corporation Completion Act of 1993, (RTCCA). The final rule augments the RTC's existing outreach program, which ensures the inclusion of minorities and women and entities owned by minorities and women in RTC contracting to the maximum extent possible, by meeting the mandates in RRIA and the RTCCA. Specifically, this rule augments the bonus points required by the RRIA for firms owned or controlled by minorities or women, as well as for other entities in which they have substantial involvement. The final rule implements new requirements imposed by the RTCCA, including the requirement that the RTC revise its contracting procedures to ensure that minority and women owned businesses and law firms are not inadvertently excluded, and that contracts with fees of equal to or greater than $500,000 not be awarded unless the contractor subcontracts specified percentages of work to minority or women owned businesses and law firms.

**EFFECTIVE DATE:** This regulation is effective February 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Johnnie B. Booker, Vice President, Division of Minority and Women's Programs, Resolution Trust Corporation, 801 17th Street, N.W., Washington, DC 20434–0001, 202–416–6925. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

### A. Background

FIRREA, enacted on August 9, 1989, amended the FHLBA, 12 U.S.C. 1421 *et seq.*, by adding section 21A, that established the RTC. Section 21A(b)(11)(A)(ii) provides that, in carrying out the duties of the RTC, the services of independent contractors shall be utilized if deemed practicable and efficient by the RTC. FIRREA, at section 1216, 12 U.S.C. 1833e, additionally required the RTC to prescribe regulations to establish and oversee a minority and women outreach program to ensure inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women in contracting activities of the RTC.

On August 15, 1991, the RTC published in the (56 FR 40484) an Interim Final Rule (12 CFR 1617) (1991 Rule) to govern the outreach portion of the program. The 1991 Rule also provided standards for qualifying as a minority and women owned business (MWOB) or minority and women owned law firm (MWOLF) for purposes of the program. Public comment was solicited, and 57 comments were received.

In November of 1991, Congress passed the RRIA. The RRIA required that in evaluating contract offers, the RTC provide technical bonuses of at least 10 percent and cost bonuses of at least 5 percent to MWOBs, MWOLFs and certain joint ventures. The RRIA also gave the RTC authority to adjust the level of bonus points as necessary.

On August 10, 1992, the RTC published (57 FR 35728) a second Interim Final Rule, 12 CFR 1617, (1992 Rule) to incorporate the mandates of the RRIA and to respond to comments that were filed in response to the 1991 Rule. The 1992 Rule set forth the scope of the RTC's Minority and Women Outreach and Contracting Program (MWOC) and set out as its mission the identification, promotion, and certification of appropriate entities for inclusion in RTC contracting activities. The 1992 Rule incorporated the Congressionally mandated program for awarding cost and technical bonuses to eligible individuals and firms, including qualified joint ventures.

The RTC stated in the preamble to the 1992 Rule, its expectation that implementation of its augmented outreach program and authority to award cost and technical bonus points would increase the percentage awarded to MWOBs to 30 percent annually. The RTC also expected that the percentage of fees paid would be commensurate with the percentage of awards to MWOBs. The RTC expected that the Division of Legal Services would increase the level of legal fees paid annually on new assignments to MWOLFs to at least 20 percent. In addition, the RTC expected that at least 10 percent of the fees paid annually to law firms would be for services performed by minority or women partners and other minority and women attorneys in non-MWOLFs. Public comment on the 1992 Rule was solicited and four comments were received.

On December 17, 1993, the RTCCA was enacted which amended section 21A of the FHLBA. The RTC is specifically required to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of MWOBs and MWOLFs whose total number of certified contractors comprise not less than 5 percent of all MWOBs and MWOLFs; to promulgate sanctions for failure to comply with MWOB and MWOLF subcontracting provisions; and to establish procedures to require all contracts let, including legal services, under which the contractor would receive fees or other compensation in an amount equal to or greater than $500,000, to have a subcontract with a MWOB or MWOLF.

Section 21A(w)(6)(A) requires the RTC to revise the procedures for reviewing and qualifying applicants for eligibility for future contracts on all Basic Ordering Agreements/Task Order Agreements (BOAs/TOAs) to ensure that minorities and women are not excluded from eligibility for task orders or other contracting mechanisms. Section 21A(w)(6)(B) requires the RTC to review all lists of contractors determined to be eligible for future task orders and other contracting mechanisms to ensure the maximum participation level possible of minority and women owned businesses; and to issue appropriate regulations and procedures. In keeping with these requirements, this rule defines procedures for ensuring that MWOBs and MWOLFs are not excluded from eligibility for task orders and other contracting mechanisms.

Section 21A(w)(7) requires the RTC to establish procedures and uniform standards, and to commit sufficient resources, including personnel, to contract oversight and enforcement of all laws, regulations, orders, policies and standards governing contracts with the Corporation. This rule identifies procedures for contract oversight and enforcement relating to Minority and Women's Programs.

Section 21A(w)(15) requires the RTC to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of MWOBs and MWOLFs whose total number of certified contractors comprise not less than 5 percent of all MWOBs and MWOLFs. The RTCCA states that these guidelines may reflect the regional and local geographic distribution of contracts awarded, but shall not be accomplished at the expense of any

eligible MWOBs and MWOLFs in any subgroup that falls below the 5 percent threshold in any region or locality. The RTC is studying this issue to assess the reasonable distribution of contract awards with commensurate fees to each ethnic and gender subgroup on a region-by-region basis. Guidelines will be issued separately from this regulation.

Section 21A(w)(16) requires the RTC to prescribe regulations which provide contract sanctions for failure to comply with subcontract and joint venture requirements. Under this provision, regulations defining sanctions relating to violation of MWOB joint venture and subcontracting plans, as well as, violations of MWOLF joint referral arrangements are incorporated in this rule.

Section 21A(w)(18) requires the RTC to establish reasonable goals for contractors for services with the Corporation to subcontract with MWOBs and MWOLFs. The RTCCA states that the RTC may not enter into any contracts under which the contractor would estimate to receive fees or other compensation for services in an amount equal to or greater than $500,000, unless the contractor subcontracts with MWOBs and MWOLFs in an amount commensurate with the percentage of services provided by the businesses. This rule sets forth guidelines and procedures to meet the statutory mandates.

Given RTC's sunset date of December 31, 1995, and that contracting activity is expected to decline in both awards and contract dollars, the mandatory subcontracting goals are being set at a level that seem, at a minimum, achievable based on RTC's data. For all contracts awarded to non-MWOB and non-MWOLF prime contractors, and MWOB joint ventures and MWOLF joint referrals with less than 50 percent MWOB/MWOLF participation, a mandatory MWOB/MWOLF subcontracting requirement of 10 percent has been established for all contracts equal to or greater than $500,000. In other words, on each such contract, a minimum of 10 percent of the fees and other compensation must be paid to an MWOB or MWOLF subcontractor, which shall be commensurate with the percentage of the services performed by such MWOB or MWOLF. For a MWOB or MWOLF prime contractor, and a MWOB joint venture or a MWOLF joint referral with 50 percent or more MWOB/MWOLF participation, the RTC has established a 5 percent MWOB/MWOLF subcontracting requirement. These requirements serve the dual purpose of increasing MWOB/MWOLF participation levels while still encouraging MWOB joint venture and MWOLF joint referral arrangements. For purposes of this subcontracting provision, if a non-MWOLF, MWOLF or RTC joint venture, co-counsel, joint-counsel or consortium arrangement is to be allocated legal fees equal to or greater than $500,000, it is required to subcontract with an MWOLF, and this MWOLF's share of the work and commensurate fees must equal no less than 5 percent or 10 percent of the contract amount, as described above. In the RTC Refinancing, Restructuring and Improvement Act of 1991, Congress mandated that the RTC ''provide additional incentives to minority- or women-owned businesses by awarding any such business an additional 10 percent of the total technical points and an additional 5 percent of the total cost preference points achievable'' when evaluating contract proposals from such businesses. FHLBA section 21(A)(r), 12 U.S.C. 1441a(r). Congress required that such points be afforded to offers by qualifying joint ventures as well as by prime contract offerors. Congress authorized the RTC to adjust the points prescribed by statute ''to the extent necessary to ensure the maximum participation level possible for minority- or women-owned businesses.'' 12 U.S.C. 1441a(r)(3). These statutory mandates were incorporated in the 1992 Rule at 12 CFR 1617.61.

In light of the RTC's experience in contracting, and the limited time until the RTC's sunset at the end of 1995, the RTC finds that, in order to comply with Congress's directive to ensure the maximum participation possible by MWOBs and MWOLFs for the duration of the RTC, the RTC has, since March 30, 1994, found it necessary to increase the bonus points available to MWOB and MWOLF prime contractors and joint ventures. This was done in keeping with the increased emphasis by Congress on ensuring maximum participation by MWOBs and MWOLFs, as evidenced by the numerous management reforms prescribed in the RTCCA in late 1993. Based upon its experience since that time, the RTC finds that it is necessary to continue to provide the increased level of bonus points contained in §§ 617.51 (MWOBs) and 1617.201 (MWOLFs) of the 1995 Rule. The RTC finds that the increased bonus point structure provides additional incentives to improve their competitive positions as prime contractors with the RTC and to encourage non-MWOBs and non-MWOLFs to enter into more substantial, longer-lasting business arrangements with MWOBs and MWOLFs.

**B. The 1995 Final Rule**

The RTC is hereby adopting a final rule (1995 Rule) that incorporates the new requirements contained in section 21A(w) (6), (7), (16) and (18) of the FHLBA which relate to the RTC's contracting program, and makes certain technical changes based on RTC's experience under the 1992 Rule and the comments submitted in response to the 1992 Rule.

A specific regulatory change to the 1992 Rule intended to increase the participation of MWOLFs is that the RTC will now, in competitive solicitations for legal services, give higher bonus points to MWOLFs and MWOLF joint ventures than to other joint referral arrangements. In doing so, the regulation recognizes that joint ventures may take many forms. Since the primary intent of this provision (which is consistent with the mandates of FIRREA and RRIA) is to increase fees to MWOLFs and MWOLF joint ventures, the bonus points provided to MWOLF joint ventures which have a single tax identification number are greater than to MWOLF joint-counsel arrangements wherein the law firms retain their individual tax identification number.

Since announcing its MWOB/MWOLF contracting expectations in the 1992 Rule, the RTC has demonstrated the ability to reach these expectations. The RTC is mindful, however, that it is necessary to continue to meet these expectations each year.

During 1991, the RTC awarded 47,540 non-legal contracts with related estimated fees of $1,675.4 million, of which 13,219 contracts (28 percent) were awarded to MWOBS with related fees of $316.7 million (19 percent). During 1992, the RTC awarded 45,949 non-legal contracts with related estimated fees of $1,293.8 million, of which 16,093 contracts (35 percent) were awarded to MWOBs with related fees of $303.9 million (23 percent). During 1993, the RTC awarded 24,500 non-legal contracts with related estimated fees of $560.3 million, of which 10,483 contracts (43 percent) were awarded to MWOBs with related fees of $210.3 million (38 percent). In 1994, the RTC awarded 17,946 non-legal contracts with related estimated fees of $555.8 million, of which 8,725 contracts (49 percent) were awarded to MWOBs with related fees of $268.8 million (48 percent).

Regarding legal services, the RTC had similar success. During the 1991 calendar year, the RTC paid $251,525,563 in fees to outside counsel;

of that amount, $6,866,275 (2.7 percent) was paid to MWOLFs. During 1992, the RTC paid $351,329,268 in fees to outside counsel; of that amount $36,204,201 (10.3 percent) was paid to MWOLFs. During 1993, the RTC paid $389,230,203 in fees to outside counsel; of that amount, $61,713,140 (15.9 percent) was paid to MWOLFs. In 1994, the RTC paid $232,100,704 in fees to outside counsel; of that amount $60,344,296 (26.0 percent) was paid to MWOLFs.

On May 20, 1992, the Legal Division established a goal of increasing fees paid on new referrals to MWOLFs to at least 20 percent per year. The Legal Division has met this goal each year. From May 20, 1992 to December 31, 1992, the RTC paid $27.5 million to outside counsel on new referrals (i.e. referrals made since May 20, 1992), and of that amount, $7.4 million (26.8 percent) was paid to MWOLFs. During 1993, the RTC paid $145.3 million to outside counsel on new referrals, of that amount, the RTC paid $38.7 million (26.7 percent) to MWOLFs; and during 1994, the RTC paid $129.9 million on new referrals, of that amount, the RTC paid $46.7 million (36 percent) to MWOLFs. The RTC will continue its efforts to maximize participation by MWOBs, MWOLFs, and minority and women partners in non-MWOLF firms.

It should be noted that the RTC's outreach efforts to minorities and women include other matters beyond contracting. They also include outreach to potential purchasers of assets from financial institutions under the RTC's control and to acquirors of such institutions. In addition, in keeping with the principles underlying the Americans with Disabilities Act, the RTC provides outreach to individuals with disabilities who wish to participate in its contracting and other programs. The 1995 Rule, however, addresses only the RTC's MWOB/MWOLF contracting program and strict conformance to this regulation is required. FIRREA, RRIA, RTCCA, FHLBA and this regulation create no private right of action and no such right should be inferred.

**C. Discussion of Comments on the 1992 Rule**

The following discussion summarizes comments submitted in response to the 1992 Rule, and provides the RTC's response to those comments. All comments were considered, however all were not specifically addressed.

Four comments were filed in response to the 1992 Rule. Two commenters were concerned that the RTC is interpreting both the MWOB and the MWOLF provisions of the rules to exclude persons of Portuguese descent from the categories of minorities entitled to participate in the program. Both commenters asserted that the term ''Hispanic American,'' one of the categories of minorities that the RTC recognizes, includes descendants of Spain or Portugal. They asserted that the RTC should either include Portuguese Americans as among the categories of Hispanic Americans or revise the rules to make Portuguese Americans an additional category.

The commenters cited several bases for their arguments. First, the commenters asserted that, whether or not Portuguese Americans technically fall within the category of Hispanic Americans, the language in FIRREA should be as inclusive as possible, and that the burden would be on the RTC to justify excluding Portuguese Americans from the program. Second, the commenters argued that Portuguese are historically included in the definition of Hispanic. Next, the commenters asserted that federal agencies that have adopted regulations concerning minority-related programs treat persons of Portuguese descent as Hispanic. In addition, the commenters asserted that federal agencies that have not adopted regulations concerning minority-related programs, in practice, treat Portuguese Americans as Hispanic Americans. They asserted that regardless of technicalities, Portuguese Americans face discrimination as a minority group.

Another commenter commended the use of bonuses, but stated that the RTC requirement that contractors have liability insurance coverage impeded participation by minority-owned contractors. The commenter suggested that future contract solicitations provide certain considerations or assistance for minority contractors to enable them to compete.

The last comment was filed by the National Bar Association (NBA). The NBA offered suggestions for improving certain sections of the rule. First, the NBA asserted that, in regard to § 1617.3, awards and fees should be tracked as follows: (1) white men; (2) white women; (3) African Americans; (4) Hispanic Americans; (5) Asian Americans and Pacific Islanders; and (6) American Indians. The commenter asserted that this tracking procedure also should apply to the law firms. The commenter also asserted that, in regard to § 1617.91, the word ''and'' should connect subparagraphs 1 and 2 to help the RTC more readily determine whether or not a woman has the requisite ownership of the firm.

In regard to § 1617.100, the commenter suggested that RTC program personnel report results of their tracking efforts on a semi-annual basis to the senior counsel for the MWOLF program in Washington, and that senior counsel should make such reports available to the legal community and in particular minority bar associations. This change would purportedly eliminate the need to make Freedom of Information Act requests, and would provide an incentive for RTC personnel to reach out to MWOLFs. The same comment was made in regard to MWOBs as well as MWOLFs. The commenter also argued that § 1617.102 should be amended to allow the legal minority and women outreach coordinators in the field to report directly to the senior counsel in Washington rather than reporting to their field supervisor. Finally, the commenter argued that the RTC should promulgate stronger inspection and enforcement regulations that will apply to firms that fraudulently certify that they are minority or women owned law firms. The commenter suggested that suspension or debarment should be made part of this regulation. The commenter also argued that the Small Business Act of 1978 applies to the RTC and that each contractor should be required to submit to the RTC a subcontracting plan to ensure that the concentration of subcontracts in the hands of large companies is reduced and that a fair proportion will be placed with minorities and women.

The RTC hereby responds to these comments as follows:

The commenters raised the issue of whether persons of Portuguese descent should be included in the definition of Hispanic American. Some federal agencies have included persons of Portuguese descent in their definitions of Hispanic American. RTC's definition of minority is based on the definition in section 1204 of FIRREA, 12 U.S.C. 1811. After due consideration, the definition in section 1204 does not provide a basis for expanding the definition of Hispanic American. The RTC's definition of minority includes persons of Central and South American origin. RTC's definition, in common with that of other federal agencies, does not include any persons with origins in Europe.

Regarding the comment on liability insurance requirements, the RTC will review this in the context of its contracting procedures. It does not feel that it would be appropriate to remove this requirement as a part of this rulemaking proceeding. However, for those contracts where insurance requirements may be lowered, a Division of Minority and Women's Program representative shall coordinate

their efforts with the Office of Contracts on a case by case basis.

In regard to the comments from the NBA, the RTC has the following responses. In regard to the tracking of fees and awards, the RTC believes that its current tracking is sufficient. In regard to the reporting of tracking results to Washington and to the public, the RTC believes that the comment is merited, and is amending the regulation accordingly. In regard to the reporting relationship of MWOLF personnel in the field to Washington, the RTC believes that the comment is merited, and is amending the regulation accordingly. Regarding enforcement procedures, the rule is being amended to state clearly that suspension and debarment from the entire RTC contracting program as well as from MWOB or MWOLF bonus considerations will be a potential consequence of false or fraudulent certifications. There is no need, however, to put detailed procedures in this regulation because the RTC's existing suspension and exclusion regulation, 12 CFR part 1618, provides sufficient procedures to handle these cases. Finally, the RTC disagrees that the Small Business Act directly applies to the RTC. However, the RTC is committed through this final rule and through its program and procedures (as mandated by the RTC Completion Act of 1993) to increase the percentage of contracts and subcontracts awarded to minority and women owned firms.

**D. Technical Changes to the 1992 Rule**

In light of its experience in administering the program under the 1992 Rule, the RTC is making certain technical changes to the 1995 Rule. Sections 1617.20 and 1617.30 govern the requirements that MWOB joint ventures and subcontracting arrangements receive technical and cost bonuses. Under the 1992 Rule, joint ventures receive compensation proportional to the work performed, whereas in subcontracting arrangements, the subcontractors receive ''commensurate fees.'' The requirements set forth in this Rule are the same for joint ventures and subcontractors. That the MWOB joint venturer or subcontractor must perform work that is significant and to be compensated in relation to the work performed. The modified language reflects this requirement. Section 1617.21(a) is being amended to clarify that the MWOB joint venture participant(s) need not have the same degree of ownership and control over the joint venture that a minority or woman would need in order for the company to be certified as a ''stand alone'' MWOB. Rather, the joint venture MWOB partner's percentage of ownership in the joint venture must directly equate to the joint venture MWOB partner's management and contract responsibilities.

**E. Administrative Procedure Act**

The RTC is adopting this final rule in order to implement the provisions of section 1216 of FIRREA, section 401 of RRIA and section 21A(w) of the FHLBA as added by section 3(a) of the RTCCA. The rule will be effective immediately upon publication in the **Federal Register**.

Several of the provisions of the final rule have been adopted without the prior notice and comment generally required by the Administrative Procedure Act (APA), 5 U.S.C. 533. The requirement of prior notice and comment may be waived for ''good cause''. The RTC hereby finds that there is good cause for such a waiver.

First, as discussed at length above, in the RTCCA, Congress mandated several reforms to improve and maximize the participation of MWOBs and MWOLFs in RTC's contracting activities. In one case (required subcontracting by MWOBs/MWOLFs), Congress made such participation a prerequisite to the RTC's ability to enter into or modify contracts after December 17, 1993 where compensation would equal or exceed $500,000. The RTC believes that in imposing these requirements, Congress was mindful of the limited duration of the RTC (which in fact was further limited by the RTCCA), and that Congress intended that the RTC implement these mandates as soon as possible in order that the maximum benefits of the mandates would be achieved.

Where the RTC has acted without prior **Federal Register** notice and comment in implementing the RTCCA, it has not done so without providing actual notice to contractors or considering feedback from such contractors. All such changes have been incorporated into the RTC's Contract Policies and Procedures Manual, which is widely available to RTC contractors. RTC contractors and offerors are regularly in communication with RTC contracting officers. If there had been major problems in the implementation of the Completion Act mandates, there is no doubt that the RTC would have been made aware of them and adjusted for them.

On balance, the RTC finds that any harm to the public from implementing the Completion Act reforms without prior rulemaking notice and comment is outweighed by the benefit to the public, and therefore, good cause as required by the APA exists.

**F. Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, comments were specifically sought on an initial regulatory flexibility analysis. No comments were specifically filed in response. The following analysis is provided.

1. *Reasons, Objectives, and Legal Basis Underlying the 1995 Rule.* These elements have been discussed elsewhere in the Supplementary Information. By publishing this 1995 Rule, the RTC intends to ensure the maximum participation levels possible of MWOBs and MWOLFs in RTC contracting activities and awards.

2. *Comments on Initial Regulatory Flexibility Analysis; Assessment of Issues Raised.* In the Preamble to the 1992 Rule, the RTC provided an initial regulatory flexibility analysis and specifically sought comments on alternative methods of compliance, or reporting requirements. No such comments were filed.

3. *Alternatives to the 1995 Rule.* The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the 1995 Rule. The RTC has made every attempt to bear the administrative burdens rather than shifting them to prospective contractors.

**List of Subjects in 12 CFR Part 1617**

Government contracts, Lawyers, Legal services, Minority businesses and Women.

For the reasons set out in the preamble, the RTC hereby revises part 1617, title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

## PART 1617—MINORITY AND WOMEN OWNED BUSINESS AND LAW FIRM PROGRAM

### Subpart A—General Provisions

Sec.

1617.1 Purpose.
1617.2 Policy.
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**Authority:** 12 U.S.C. 1441a(t) and 1833e.

## Subpart A—General Provisions

### § 1617.1 Purpose.

(a) Section 1216 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 1833e, requires that the Resolution Trust Corporation (RTC or the Corporation) prescribe regulations to establish and oversee a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to the agency.

(b) This part details the procedures that the RTC will follow to ensure the inclusion of businesses and law firms owned by minorities or women in RTC's contracts for goods and services in connection with its management of savings and loan institutions placed under RTC control and the disposition of their assets.

### § 1617.2 Policy.

(a) It is the policy of the RTC that Minority and Women Owned Businesses (MWOBs) and Minority and Women Owned Law Firms (MWOLFs) are included to the maximum extent possible in all contracting activities of the Corporation. The RTC's objectives in contracting will be achieved through the establishment of goals using RTC contracting procedures. This applies to contracting for the procurement of goods and services, and the contracting activities of Conservatorships and Receiverships. Every employee of the RTC has the affirmative duty and responsibility to identify and seek to remove any barriers to the maximum possible participation by MWOBs, MWOLFs and minority and women partners in non-MWOLFs in the RTC's contracting activities.

(b) It is the policy of the RTC to ensure that MWOBs are included, to the maximum extent possible, in all non-legal services contracted for by the RTC, including non- legal services contracted for by private sector contractors. It is expected that all program and sales offices will increase the level of participation and fees paid annually by the RTC to at least 30 percent for minority and women owned businesses.

(c) It is the policy of the RTC to ensure that MWOLFs, and minority and women partners in non-MWOLFs are included to the maximum extent possible, in all legal services contracted for by the RTC, including legal services contracted for by private sector contractors. It is expected that the RTC will increase the level of legal fees paid annually on new referrals to MWOLFs to at least 20 percent. In addition, at least 10 percent of the total legal fees paid annually will be paid to minority or women partners and other minority and women attorneys in non- MWOLFs.

### § 1617.3 Scope.

(a) This part applies to all contracting activities engaged in by the RTC in its Corporate, Conservatorship and Receivership capacities (including contracting by private sector contractors for the RTC, services provided directly to the Corporation and services provided to Conservatorships and Receiverships) with private persons and entities for all functions authorized by law.

(b) Sections 1617.10 through 1617.60 and § 1617.300 apply to all non-legal contracting activities engaged in by the RTC, in any of its capacities. It applies to non-legal services including, but not limited to, asset management, accounting services, appraisals, property management, information systems, property maintenance, surveying, general contracting and subcontracting, architectural/ engineering consulting, title work, financial investigation services, marketing, signage and printing services and related services.

(c) Sections 1617.70 through 1617.202 and § 1617.301 apply to all contracts for legal services engaged in by the RTC, in any of its capacities (including contracting by private sector contractors for the RTC, services provided directly to the Corporation and services provided to Conservatorships and Receiverships). It applies to legal services including, but not limited to, litigation, transactions, bankruptcy, bond claims, director and officer liability, and other areas of law specific to the RTC.

### § 1617.4 RTC organizational responsibilities and staffing.

(a) *Organization*. The RTC has established a Division of Minority and Women's Programs (DMWP) in Washington with a Vice President to

provide management, direction, consultation, and training to other RTC offices in order to ensure that this program is being effectively and consistently implemented. The RTC shall have staff and resources within the DMWP dedicated to this program in each of its offices.

(b) The DMWP staff in Washington and the RTC field offices both report directly to the Vice President for the DMWP in Washington, D.C. The RTC shall allocate sufficient resources, including personnel to oversee, manage, and implement the MWOB and MWOLF programs in accordance with statutory mandates, RTC policies, directives and procedures. All DMWP personnel decisions that include selection, performance appraisals, promotion and disciplinary actions shall be made directly by, or through delegated authority of, the above-mentioned Vice President of the DMWP.

(c) There are three major departments in the DMWP responsible for including MWOBs and MWOLFs in RTC contracting:

(1) *Department of Minority and Women Owned Business.* The DMWP has established a Department of Minority and Women Owned Business (DMWOB) to ensure that firms owned and operated by minorities and women are included, to the maximum extent possible, in all contracting activities of the Corporation. The DMWOB is headed by a Director in the Washington Office who has the responsibility for the direction of all MWOB activities and programs relating to contracting, MWOB certification, investor opportunities, and the preservation and expansion of minority ownership of financial institutions. In each field office, there is staff dedicated to the MWOB Program. Program efforts include direct participation in the contracting process, promotion of joint ventures and subcontracting, working with program areas to structure asset management portfolios to facilitate MWOB participation, and other special initiatives to increase the level of MWOB contract awards. The DMWOB also targets and promotes opportunities for minorities and women as investors and acquirors of thrift institutions and assets, and encourages RTC deposits with financial institutions owned by minorities.

(2) *Department of Legal Programs.* The DMWP has established a Department of Legal Programs (DLP) to ensure that MWOLFs and minority and women partners in non-MWOLFs are included, to the maximum extent possible, in all legal contracting by the RTC and by its contractors on behalf of the RTC. The DLP is a voting member of the RTC Legal Services Committee which approves all outside counsel referrals for legal services. The DLP is headed by a Senior Counsel/Director in the Washington Office. In the field, each office has staff dedicated to implementing, overseeing, monitoring and tracking the outreach program. The DLP coordinates activities with the Legal Division to identify MWOLFs and enhance contracting opportunities through direct referrals, joint referrals or other arrangements.

(3) *Department of Policy, Evaluation and Field Management.* The DMWP has established a Department of Policy, Evaluation and Field Management (DPEFM) to provide uniform policy development, interpretation, implementation and management to ensure that the RTC achieves its contracting, sales and other goals and objectives related to the participation of minorities and women. The DPEFM evaluates the effectiveness of the RTC's activities, initiatives, and actions to determine adherence to, and compliance with, DMWP's policies, programs and procedures. The DPEFM is headed by a Director in the Washington Office who is responsible for the implementation of all policy development, interpretation, evaluation, oversight and monitoring functions for the DMWP to assure coordinated and consistent implementation of the MWOB, MWOLF and other DMWP initiatives. The DPEFM implements an oversight and evaluation program to ensure that the RTC achieves its minority and women contracting program goals and objectives. The DPEFM manages the administrative, resource distribution, field planning, reporting, and related functions for the DMWP. In addition, the DPEFM provides the official complete and up-to-date information on contracting activities to RTC management, the Congress, and the public.

**§ 1617.5 Definitions.**

The following definitions and eligibility criteria have been established to allow RTC to review, evaluate, and approve private sector certifications for minority- and woman-owned business and law firm status.

(a) *''Control'' by a minority or women.* RTC shall find that minority or women owned businesses or law firms are controlled by a minority or woman when the person(s) upon whom eligibility is based:

(1) Has the right to vote his or her shares or other equity interest to elect the majority of voting members of the board of directors or other governing body, and holds the position of chairperson of the board, president, chief executive officer, or equivalent position;

(2) Has direct full-time responsibility for the day-to-day management of the business, as evidenced by:

(i) Directly related managerial or technical experience and competency;

(ii) Establishment of company policies;

(iii) Determination and selection of business opportunities;

(iv) Supervision and coordination of projects;

(v) Control of major expenditures;

(vi) Hiring and dismissing key personnel;

(vii) Marketing and sales decisions; and

(viii) Signature on major business documents (including, but not limited to any RTC documents, tax returns, leases, mortgages, notes, contracts, and other financial documents);

(3) Has a significant percentage of senior management positions held by women, if a woman-owned business; and

(4) Has met the expectation of the RTC that the requirements of paragraph (a) of this section be performed on a day-to-day basis, at the principle place of business of the minority- or woman-owned business or law firm, by the minority or woman upon whom eligibility is based. That is, the RTC expects that such individuals shall have actual, direct, non-delegable, daily responsibility for the requirements in paragraphs (a)(2) (i) through (viii) of this section.

(b) *Direct referral.* A direct assignment of a legal matter to an MWOLF.

(c) *Joint referrals.* The assignment of a legal matter to two or more law firms, at least one of which must be an MWOLF. The joint legal referral may take a variety of forms:

(1) *Co-counsel.* A joint referral in which two or more outside counsel, at least one of which must be a MWOLF, obtain work together through a relationship established by the RTC. Each co-counsel law firm has a separate taxpayer identification number.

(2) *Joint-counsel.* A joint referral in which two or more outside counsel, at least one of which must be a MWOLF, obtain work together through a relationship proposed in writing by them to the RTC. Each joint-counsel law firm has a separate taxpayer identification number.

(3) *Joint law firm venture.* A joint referral in which two or more outside counsel, at least one of which must be a MWOLF, obtain work together through a partnership formed by them under

state law to engage in and carry out the practice of law as a business venture, for which purpose they combine their efforts, resources and skills for joint profit. The joint law firm venture has a single taxpayer identification number.

(4) *Consortium of MWOLFs.* A joint referral of more than two outside counsels, all of which must be MWOLFs, pool their personnel, expertise, support, staff and facilities to obtain work together through a relationship proposed by them to the RTC. Each consortium law firm has a separate taxpayer identification number.

(d) *Joint venture with MWOB participation.* An association of entities and/or individuals, with the combined entity having its own unique tax identification number, which at least one of the participants is a certified MWOB, formed by written contract to engage in and carry out a specific business venture for which purpose they combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally.

(e) *Legal services agreement.* An agreement entered into between the Legal Division and outside counsel, as defined in the RTC Legal Division Contracting Procedures.

(f) *Legal services committee.* The committee established in each office whose members represent the Legal Division and the DMWP, and whose responsibility it is to select and engage all outside counsel with regard to legal services to be performed within the supervision of said office.

(g) *List of counsel.* The list of law firms in the Legal Division's computer database that are eligible to perform legal services for the RTC. Only law firms on this list may have legal matters referred to them.

(h) *Minority.* Any Asian American, Black American, Hispanic American, Native American, Eskimo or Pacific Islander who is either a citizen or a permanent resident of the United States.

(1) *Asian American.* A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent.

(2) *Black American (not of Hispanic Origin).* A person having origins in any of the black racial groups of Africa.

(3) *Hispanic American.* A person of Mexican, Puerto Rican, Cuban, Central or South American origin, regardless of race.

(4) *Native American.* A person having origins in any of the original peoples of North America.

(5) *Eskimo.* A person having origin in the Eskimo or Aleutian peoples.

(6) *Pacific Islander.* A person having origins in any of the original nations commonly referred to as the ''Pacific Rim Countries'', including the Hawaiian Islands.

(i) *Minority owned business.* Any business in which:

(1) More than 50 percent of the ownership or control is held by one or more minority individuals; and

(2) More than 50 percent of the net profit accrues to one or more minority individuals.

(j) *Minority owned law firm.* Any law firm or practice in which:

(1) More than 50 percent of the ownership or control is held by one or more minority attorneys;

(2) More than 50 percent of the net profit accrues to one or more minority attorneys; and

(3) All attorneys within the firm are in good standing with the respective state bar licensing authority.

(k) *MWOLF subcontractor.* An RTC-approved outside counsel retained by another RTC-approved outside counsel, for the purposes of the RTC Completion Act, to provide legal services when anticipated fees or other compensation are expected to be $500,000 or more. The outside counsel retained as the subcontractor shall have the same professional liability relationship with the RTC and the prime contractor as if the subcontractor were joint counsel with the prime contractor in providing legal services to the RTC.

(l) *Outside counsel.* A law firm or individual attorney therein, or solo practitioner that has entered into a Legal Services Agreement with the Legal Division to be available for engagement to provide legal services.

(m) *Bonus considerations.* (1) *Bonus considerations for MWOBs and MWOLFs.* Bonus considerations are authorized by § 401(t)(1) of RRIA. In the review and evaluation of proposals, the Corporation shall provide additional incentives to minority or women owned businesses and law firms by awarding any such business or firm a percentage of the total technical points and a percentage of the total cost points achievable in the technical and cost rating process applicable with respect to such proposals.

(2) *Bonus considerations for joint ventures.* Bonus considerations shall apply to any proposal submitted by a joint venture in which MWOBs and MWOLFs have at least 25 percent MWOB/MWOLF participation.

(3) *Bonus considerations for subcontracting.* Bonus Considerations shall apply to any proposal submitted by a non-minority firm in which a certified MWOB or MWOLF has at least 25 percent MWOB or MWOLF subcontracting participation.

(4) *Authority to adjust technical and cost bonus considerations.* The RTC may adjust the technical and cost bonus points applicable in evaluating proposals to the extent necessary to ensure the maximum participation level possible for minority or women owned businesses and law firms.

(n) *Private sector contractor.* Any person or entity that performs services on behalf of the RTC pursuant to a contract, including, but not limited to, an asset manager.

(o) *Request for proposals (RFPs).* Any request to a law firm for proposals to provide certain legal services to or on behalf of the RTC.

(p) *RTC oversight attorney.* Any attorney within the RTC Legal Division who oversees and manages outside counsel in relation to a particular legal matter.

(q) *Solicitation of services (SOS).* Any request to a business for proposals to provide certain services to or on behalf of the RTC.

(r) *Women owned business.* Any business in which:

(1) More than 50 percent of the ownership or control is held by one or more women;

(2) More than 50 percent of the net profit or loss accrues to one or more women; and

(3) A significant percentage of senior management positions are held by women.

(s) *Women owned law firm.* Any law firm or practice in which:

(1) More than 50 percent of the ownership or control is held by one or more women attorneys;

(2) More than 50 percent of the net profit or loss accrues to one or more women attorneys;

(3) A significant percentage of senior management positions are held by women attorneys; and

(4) All attorneys within the firm are in good standing with the respective state bar licensing authority.

## Subpart B—General Provisions Applicable to Businesses

### § 1617.10 Contracting objectives.

The RTC has established standards by which it will evaluate its success in maximizing participation of minority and women owned businesses (MWOBs) in its contracting activities. The awards and fees shall be tracked separately for minorities and women. All awards and fees shall be tracked by RTC regional and local geographic areas. The RTC's success in meeting its objectives will be evaluated

periodically, and modifications will be made as needed.

(a) Each office, including sales centers, shall make every effort to raise MWOB participation in accordance with the RTC's objectives.

(b) Contractors are strongly encouraged to utilize joint ventures and subcontracting arrangements with MWOBs to increase MWOB participation. Bonus considerations shall be given to contractors that, through joint ventures or subcontracting, achieve specified levels of MWOB participation.

(c) Within six months of the date of conservatorship, each conservatorship must bring its contracting activity into compliance with the RTC's DMWP policies and procedures.

(d) Evaluation of performance of contractors shall include their efforts and success in meeting RTC's DMWP goals, including mandatory MWOB and MWOLF subcontracting. The DMWP will conduct periodic visits or reviews of contractors to assess their compliance with RTC policies.

(e) RTC contractor's failure to comply with RTC rules and regulations, including DMWP policies and procedures, particularly with respect to certification, joint venture and subcontracting requirements, may result in adverse actions against the MWOB, prime contractor, or joint venture partners including, but not limited to, withholding of fees, contract termination, and/or referral to the Office of Ethics, which may result in suspension or exclusion from the RTC contracting program pursuant to 12 CFR part 1618, with appropriate referrals to the Office of the Inspector General.

**§ 1617.11 Program components.**

(a) The DMWOB coordinates with the Contracts, Program and Sales Offices to ensure the inclusion of minority and women owned businesses to the maximum extent possible in RTC contracting activities. DMWOB monitors RTC private contractors to ensure that they are aware of, adopt and adhere to, all RTC policies and procedures for contracting with MWOBs.

(b) The DMWOB shall be a non-voting member of the Technical Evaluation Panel (TEP) and shall participate directly in the contract award process to ensure that the evaluation of proposals from MWOBs for potential awards is fair and follows RTC's policies and procedures, and that technical and cost bonus points are applied appropriately and correctly. After the technical evaluation, scoring material shall be available for review and concurrence by the Program Office, Legal Division, and the DMWP.

(c) The DMWOB shall concur on the assignment of technical and cost bonus points prior to selection of offerors in competitive range.

(d) The DMWOB staff shall develop and maintain a direct relationship with the Contract, Program and Sales Offices, Oversight Managers and Conservatorship staff in order to increase the number of non-legal contracts and fees awarded, as well as sales transactions, to MWOBs.

(e) *Outreach.* A continuing effort of the RTC involves identifying MWOBs capable of providing contracting services to the RTC. This effort is nationwide in scope and focuses on networking and training.

(1) *Networking.* Washington and field office staff will network with Federal, State and local governments, non-profit organizations, professional and trade organizations; and participate in conventions and seminars sponsored and widely attended by minorities and women. Promotional campaigns will be developed to inform the minority and women owned business community of the Corporation's needs and its commitment to involve such firms in its contracting activities; and information on purchasing RTC assets and thrifts shall be disseminated. MWOB firms shall be assisted in understanding and meeting the RTC's contracting needs, especially as they shall be represented in various Solicitations of Services (SOSs), and these firms shall be placed on appropriate source lists for SOSs. MWOB firms shall also be informed about RTC's regulations governing ethical responsibilities, conflicts of interest, confidentiality, and the certification process for eligibility as a MWOB.

(2) *Training.* The Washington Office shall coordinate training initiatives, workshops, and seminars for MWOBs and RTC staff. These activities are designed to increase awareness and to ensure the inclusion of minorities and women, and firms owned by minorities and women, in the RTC's contracting process, regulations, and special initiatives, as well as ensure that all RTC staff who interact with the contracting and investment community are knowledgeable of and support the program. Technical training needs of MWOB contractors shall be identified and materials and training modules shall be developed to increase MWOB participation. In addition, DMWP policies, directives and program goals and objectives shall be incorporated into training modules for an internal education program for all RTC staff to promote RTC's commitment to the full participation of MWOBs in all contracting and sales activities.

(3) *Database review.* The DMWP field staff shall enhance the efforts of the outreach program through their ongoing review of the MWOB database and the Contracting Activity Reporting System (CARS) identifying geographic and service categories in which firms are under represented. The outreach program shall target its efforts in areas where the MWOB database indicates MWOBs are under represented.

(4) *Special events.* Special events shall be developed to meet the needs or concerns of MWOBs. These events may include: subcontracting, teaming, joint venture fairs or seminars, open houses with Standard Asset Management and Disposition Agreement (SAMDA) contractors, investor forums, and coordination of events with the Minority Business Development Agency, Small Business Administration, other governmental entities, and private and non-profit organizations.

**§ 1617.12 Program promotion.**

(a) The DMWOB shall conduct seminars and workshops for MWOB firms. The focus of these events shall be to provide information regarding the program, its goals and objectives, and companies qualified to participate in the program; to facilitate interaction between RTC and these firms; and to manifest RTC's commitment to doing business with these groups.

(b) Contract opportunities for MWOBs shall be expanded by encouraging both minority and women owned firms to form joint venture arrangements and cooperative agreements with other larger firms.

**§ 1617.13 Certification.**

(a) Each firm claiming status as a MWOB shall be required to provide certification of that status. To preserve the integrity and foster the objectives of the program, RTC must satisfy itself that the ownership or control requirements of the program are fulfilled. On-site visits shall be performed by the DMWOB and may include the Office of Contract Oversight and Surveillance (OCOS).

(b) RTC has implemented a certification policy and procedures designed to prevent fraudulent representations. Procedures have been established by which the DMWP shall review, evaluate, and approve notarized certification forms and accompanying documents from MWOBs, prior to submission of the firm for a source list, or prior to participation in the contracting process.

(c) When a MWOB firm is selected for an award, a pre-award on-site verification is required for all contracts with estimated fees in excess of $100,000, or when the award will result in accumulated fees over $100,000. The DMWP reserves the right to perform an on-site verification to firms with fees under $100,000. Additionally, all joint ventures are subject to on-site verifications. If the eligibility of a firm as a MWOB is questionable, based on misrepresentation, the OCOS will participate in the on-site verification.

(d) RTC shall be notified of any changes in ownership, senior management, MWOB joint venture participant(s), or other factors that may affect eligibility.

(e) Any misrepresentations, (including falsification of MWOB Certification), omissions or changes by the MWOB, the non-MWOB, or the joint venture partnership with respect to ownership or control; senior management; MWOB joint venture participant(s); the allocation of profits and losses; or any other factors that may affect eligibility, may result in adverse actions against the MWOB, prime contractor, or joint venture partners including, but not limited to, withholding of fees, contract termination, and/or referral to the Office of Ethics, which may result in suspension or exclusion from the RTC contracting program pursuant to 12 CFR part 1618, with appropriate referrals to the Office of the Inspector General.

(f) If the firm is found ineligible for MWOB status, and is denied such status, it shall be informed of its right to file an appeal to the Vice President, DMWP in Washington, DC.

### § 1617.14 Participation of MWOB contractors in task order agreements.

(a) To ensure the maximum participation of MWOBs in its contracting activities, the RTC shall maintain procedures to ensure that minorities and women shall not be inadvertently excluded from eligibility for Task Order Agreements. Such procedures shall include reviewing lists of contractors eligible to compete for such Task Order Agreements in order to ensure that the maximum participation level of MWOBs.

(b) The RTC has promulgated detailed procedures to comply with this policy. The procedures are contained in the RTC's Contract Policies and Procedures Manual (CPPM). Copies of the CPPM are available from the RTC Public Reading Room, 801 17th Street, NW., Room 100, Washington, DC 20434–0001.

## Subpart C—Joint Ventures

### § 1617.20 General.

In an effort to ensure and enhance inclusion of MWOBs in the RTC's contracting activities, the Corporation supports and promotes the concept of joint ventures. The intention of this policy is to provide MWOBs an opportunity to acquire training through their association with a more established or larger firm and to increase resource development opportunities so that MWOB firms will continue to develop the expertise and capacity to compete independently.

### § 1617.21 Eligibility.

A joint venture will be eligible for this program if it meets the following requirements:

(a) Each MWOB participant is responsible for a clearly defined portion of the work to be performed and holds management/contract oversight responsibilities related to the main purpose of the contract; and

(b) The MWOB participant(s) performs at least 25 percent of the substantive duties under the entire contract, and is contractually entitled to compensation proportionate to its(their) duties.

### § 1617.22 Establishing joint ventures.

A firm receiving a solicitation from the RTC may form a qualifying joint venture with one or more other firms that may or may not have received the solicitation. Each joint venture that is established before receipt of any SOS, and every joint venture engaged by RTC, must have its own tax identification number (TIN) and must meet RTC's fitness and integrity requirements.

### § 1617.23 Joint venture agreements.

To qualify for bonus considerations, the joint venture must provide a copy of its written joint venture agreement to RTC prior to being submitted for a source list or at the time it submits a proposal. That agreement must identify clearly the work to be performed, the extent of total work participation by each firm in the joint venture, the address of each firm, and the following:

(a) The purpose of the joint venture;

(b) The date the joint venture was established;

(c) The joint venture's federal TIN;

(d) Any other names under which the joint venture has done or is doing business;

(e) The management structure of the joint venture, including which of the joint venture participant(s) employs each of the management staff and the roles and responsibilities of each venturer in performing the services under the contract;

(f) The percentage of joint venture ownership interests, the percentage of substantive work to be performed by the MWOB participant(s) on the contract and the percentage of RTC funds earned by the joint venture to be distributed to the MWOB participant(s);

(g) The allocation of joint venture income/loss derived from the joint venture's activities with the RTC (as measured by total joint venture fees less total joint venture expenses). The joint venture agreement also should state the method of determining income/loss (*i.e.*, cash or accrual and tax basis or using generally accepted accounting principles);

(h) The initial capital investment, including investments made in cash, equipment, facilities, etc., by each participant;

(i) Whether other resources will be furnished by each joint venture participant and the basis on which such resources will be furnished;

(j) Whether the insurance requirements will be apportioned among the joint venture participants and to what extent;

(k) That each party to the joint venture is liable for the proportionate percentage of joint venture participation for all activities of the joint venture;

(l) That the MWOB participant(s) in the joint venture will have the opportunity to represent itself, at all RTC meetings related to the contract, such as offerors' conferences, debriefings, contract closings and contract oversight reviews;

(m) That all parties to the joint venture shall fully disclose to one another all SOSs, Task Order Bids, Notices of Best and Final Offers, SOS Amendments, Notices of Awards, Contracts and any and all other documents or meetings necessary or relative to the joint venture. Such disclosures must be made to the MWOB participant(s) before submission of any proposals, bids or offers for contracts with the RTC; and

(n) That financial, ownership, control, or shared employee (including members of the board of directors) relationships of the members of the joint venture, if such relationships exist, shall be disclosed.

### § 1617.24 Joint venture reporting and sanctions.

(a) The contractor shall be required to submit periodic detailed reports of substantive work and distribution of payments to each joint venture partner, to allow the RTC to determine the extent of compliance by the contractor with the

MWOB joint venture agreement. Summary joint venture reports shall be required in accordance with RTC instructions.

(b) The RTC shall evaluate the contractor's performance in relation to its implementation of the MWOB joint venture agreement. The DMWP shall give notice to the contractor during performance if the contractor is failing to meet his or her commitments under the joint venture agreement. If a contractor's performance is inadequate, the contractor shall be given a 30-day period on contracts of one year or more and a proportionate period on contracts of shorter duration to resolve the non-compliance. If after the compliance period elapses, the contractor has not corrected the non-compliance, the RTC shall initiate appropriate remedial action. Any misrepresentations, omissions or changes by the MWOB, the non-MWOB, or the joint venture partnership with respect to ownership or control; senior management; MWOB joint venture participant(s); the allocation of profits and losses; or any other omissions or changes or other factors that may affect eligibility, may result in adverse actions against the MWOB, prime contractor, or joint venture partners including, but not limited to, withholding of fees, contract termination, and/or referral to the Office of Ethics, which may result in suspension or exclusion from the RTC contracting program pursuant to 12 CFR part 1618, with appropriate referrals to the Office of the Inspector General.

## Subpart D—Subcontracting

### § 1617.30 Policy.

(a) The RTC has determined that one of the most effective methods for increasing participation of MWOBs in its contracting activities is the use of MWOBs as subcontractors. While the ability to subcontract is within the power of the contractor, the RTC shall provide additional bonus points to offerors subcontracting at least 25 percent of the substantive work and commensurate fees to MWOBs. More bonus points will be available to contractors who reach levels of subcontracting greater than 25 percent.

(b) In accordance with RTC's other general requirements for subcontracting activity, the RTC shall satisfy itself that all private sector firms awarded a contract with the RTC will provide the maximum opportunity possible to minority and women owned contractors to participate in subcontracting awards. All RTC contractors must agree to carry out this policy in a manner consistent with RTC's overall contracting policies and procedures.

(c) Bonus points are available to any offeror who subcontracts at least 25 percent of the substantive work and commensurate fees under a contract to MWOBs. Any offeror that seeks to obtain bonus points on a prime contract or task order agreement through subcontracting work to MWOBs must submit with its proposal a subcontracting plan. The offeror's subcontracting plan shall apply throughout the life of the contract.

(d) If a prime contractor proposes to contract with a MWOB subcontractor(s), the RTC requires that an offeror certify that if awarded a contract, the firm will implement the MWOB Subcontracting Plan submitted with its proposal, to provide the approved percentage of MWOB participation to the named MWOB subcontractor(s).

(e) The prime contractor must obtain a completed MWOB certification package from each proposed MWOB subcontractor in its subcontracting plan and must submit these documents with its proposal or RTC certified MWOB affidavit. The prime contractor shall not substitute the named MWOB subcontractor(s) without prior approval from the DMWP.

### § 1617.31 Subcontracting plans.

The subcontracting plan must include within the proposal:

(a) Specific name(s), roles and responsibilities of the MWOB subcontractor(s);

(b) Separate percentages of work allocated to minority and/or woman subcontractor(s) (how much to each) and projections of the monthly work distribution schedule for the term of the contract for each subcontractor and/or joint venture partner;

(c) Estimated dollar amount of participation of MWOB subcontractor(s);

(d) The name of an individual employee of the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual;

(e) A statement as to whether the MWOB subcontractor(s) will be required to provide the following insurance and to what extent: fidelity bond, errors and omissions, and liability;

(f) Previous experience working with MWOB firms;

(g) Assurances that the offeror will cooperate in any oversight, review, study or survey, as may be required;

(h) A copy of the written agreement between the contractor and the subcontractor establishing that the plan meets at least the 25 percent participation requirement; and

(i) Disclosure of financial, ownership, control, or shared employee (including members of the board of directors) relationships between the MWOB subcontractor and the primary contractor, if such relationships exist.

### § 1617.32 MWOB subcontracting requirements.

(a) Effective December 17, 1993, the RTC shall not, in any capacity, enter into or modify any contract for the provision of goods and services to RTC under which the contractor would receive fees or other compensation in an amount equal to or greater than $500,000, unless the contractor subcontracts part of the engagement with one or more MWOBs, and pays fees or other compensation to such MWOBs in an amount commensurate with the percentage of services provided by the MWOB(s). The mandatory MWOB subcontracting provisions apply to both non-minority and minority contractors. For all contracts with estimated fees and other compensation equal to or greater than $500,000, non-MWOB contractors shall be required to subcontract no less than 10 percent of the contract services and commensurate fees to MWOBs. A MWOB or a joint venture with 50 percent or more MWOB participation is required to subcontract no less than 5 percent of contract services and commensurate fees to a MWOB.

(b) The RTC shall not enter into or extend a contract, task order and modification thereto which will result in fees or other compensation equal to or greater than $500,000, unless the contractors agree to meet the MWOB mandatory subcontracting requirements.

(c) More specific procedures and guidelines for the implementation of paragraphs (a) and (b) of this section are contained in the RTC's Contract Policies and Procedures Manual (CPPM). Copies of the CPPM are available from the RTC Public Reading Room, 801 17th Street, NW, Room 100, Washington, DC 20434–0001.

(d) The RTC may exclude a contractor from the requirements of paragraph (b) of this section if the Chief Executive Officer of the Corporation determines, through written documentation, that imposing such a subcontracting requirement would:

(1) Substantially increase the cost of contract performance; or

(2) Undermine the ability of the contractor to perform its obligations under the contract.

(e) Reports and notarized certifications subject to 18 U.S.C. 1001.

(f) The RTC, through a written determination by the Chief Executive Officer, may grant a waiver from the requirements of paragraphs (a) and (b) of this section for any contract, provided that the contractor certifies that it has determined that no eligible MWOB is available to enter into a subcontract, with respect to a contract to which paragraphs (a) and (b) of this section are otherwise applicable; provides a list of MWOB contractors contacted, including firm name, MWOB tax identification number, address, telephone number, and contact official; and provides a detailed explanation of the basis for the contractor's determination, including written documentation from the local RTC DMWP concurring in the determination that there are no eligible MWOBs available.

(g) The offeror/contractor is subject to §§ 1617.30, 1617.31 and 1617.33.

**§ 1617.33 Post-award oversight.**

(a) The contractor will be required to submit periodic detailed reports of substantive work and payments to MWOB subcontractors, to allow the RTC to determine the extent of compliance by the contractor with the MWOB subcontracting plan. Summary subcontracting reports will be required in accordance with RTC instructions.

(b) The RTC will evaluate the contractor's performance in relation to its implementation of the MWOB subcontracting plan. The RTC will give notice to the contractor if the contractor is failing to meet his or her commitments under the subcontracting plan. If a contractor's performance is inadequate, the contractor will be given notice in accordance with the terms and conditions of the contract. If after the compliance period elapses, the contractor has not corrected the non-compliance issue, the RTC shall initiate appropriate remedial action, that could result in the withholding of fees, contract termination, and/or referral to the Office of Ethics which may result in suspension, or exclusion of the contractor.

## Subpart E—Solicitation and Contract Award Guidelines

**§ 1617.40 Inclusion in solicitations.**

RTC policies and guidelines will ensure, to the maximum extent possible, participation of MWOBs in each contract solicitation. In order to increase competition for MWOBs, the RTC shall implement smaller contract assignments, such as soliciting proposals for asset managers to manage small, homogeneous, geographically concentrated asset pools. For noncompetitive contracts under $5,000, the use of MWOB firms is encouraged.

**§ 1617.41 Participation by the Division of Minority and Women's Programs in the solicitation and award process.**

(a) The DMWP staff shall participate in the initial review and Statement of Work meeting with the requesting program office and the Legal Division to establish milestones, specific task descriptions, and contractor responsibilities. The DMWP shall participate in the Source Selection Plan process to assure inclusion of MWOB firms. The DMWP shall assure that the following contract requirements are fair, equitable and consistent:

(1) The selection criteria for notices or issuance of SOSs;

(2) The advertising language; and

(3) Standards for most important, more important, and important factors, and scoring criteria.

(b) The DMWP shall participate in the preparation of responses to questions received from offerors in consultation with the Contracts Office, Program Office, and Legal Division.

(c) The DMWP staff shall participate as non-voting members in the technical evaluation process. After the technical evaluation, scoring material shall be available for review and concurrence by the Program Office, Legal Division, and the DMWP.

(d) The DMWP shall concur on the assignment of technical and cost bonus points prior to selection of offerors in competitive range.

(e) To ensure inclusion by MWOBs in the contracting process, the DMWP must concur in the selection of the contractor.

(f) In the post-award phase, the DMWP shall participate in MWOB debriefings and contractor performance evaluations.

(g) The DMWP, in conjunction with OCOS, will conduct quarterly and annual site visitations of SAMDA contractors to review contractor compliance with RTC policies and procedures.

(h) The DMWP shall conduct quarterly and annual site visitations of any contractor who is subject to MWOB participation in joint ventures and subcontracting plan(s).

**§ 1617.42 Participation by the Division of Minority and Women's Programs in contract administration.**

The DMWP shall participate in the oversight (i.e. evaluation, rating, and other matters) relating to contract performance and compliance, specifically those matters related to the implementation of DMWP activities and fulfillment of subcontracting plan and joint venture agreement obligations and commitments. This includes interactions between parties once payment has been made, during the resolution of any disputes or adjustments, and until the contract is formally closed. The DMWP shall participate and concur in decisions related to contract changes and modifications to assure that MWOBs are fully included in decisions related to changes and modifications to their contracts; and in conformance with the joint venture agreement and subcontracting plan terms and conditions related to MWOB eligibility. The DMWP shall:

(a) Participate and concur in the preparation of the Contract Administration Plan with the oversight managers and contract officer; the post-award conference to discuss milestones, reporting requirements, training needs, roles and responsibilities; and technical requirements of MWOB Program implementation;

(b) Participate as a contract administration team member with full responsibility for monitoring compliance of all firms with MWOB Program requirements; attending site visits and performance reviews; and providing technical oversight, assistance, training, and other direction as required;

(c) Monitor contractor payments for timeliness and accuracy of the contractor's payment to MWOB subcontractors in accordance with established and previously approved subcontracting plans;

(d) Monitor contractor fee splits for timeliness and accuracy, and verify fee distributions to MWOB joint venture participants;

(e) Review and concur on all requests for contract amendments and modifications initiated by the contractor or RTC to assure that they are not prohibitive or impediments to maximizing the levels of participation for MWOBs in potential contract opportunities; and

(f) Review and concur in all requests for the assignment and/or re-assignment of contracts to determine the impact of such assignments on RTC's MWOB goals and on the participation of minorities and women.

## Subpart F—Technical and Cost Bonus Points

**§ 1617.50 Policy.**

In the review and evaluation of proposals submitted by firms eligible as MWOBs, MWOB joint ventures, or non-MWOBs with qualifying subcontracting

plans, RTC shall provide bonus points in the technical and cost rating process.

**§ 1617.51 Application of technical and cost bonus points.**

(a) Technical bonus points shall be awarded as a percentage of the total technical points achievable in the rating process in addition to each offeror's technical score.

(b) Cost bonus points shall be awarded as a percentage of the total cost points achievable in the rating process in addition to each offeror's cost score.

(c) The technical and cost bonus points shall be allocated as follows:

| Firm type | Percent technical | Percent cost |
|---|---|---|
| MWOB | 15 | 10 |
| Joint Venture with at least 40 percent MWOB participation | 15 | 10 |
| Joint Venture with at least 25 percent MWOB participation | 10 | 5 |
| Non-MWOB firm with sub-contracting plan of at least 40 percent MWOB participation | 10 | 5 |
| Non-MWOB firm with sub-contracting plan of at least 25 percent MWOB participation | 5 | 2.5 |

(d) All contracts which have estimated fees or other compensation equal to or greater than $500,000 or when the award will result in accumulated fees or other compensation which will be equal to or greater than $500,000, the contractor shall be required to satisfy the 5 percent or 10 percent mandatory MWOB subcontracting requirement. For non-MWOB contractors, this 10 percent subcontracting requirement is deemed satisfied in cases where offerors submit acceptable MWOB subcontracting plans of at least 25 percent and are requesting technical and cost bonus consideration.

**§ 1617.52 Authority to adjust technical and cost bonus points.**

(a) The DMWP shall evaluate the Corporation's application of bonus points annually. This annual review shall determine whether the Corporation is meeting the mandate to ensure the maximum participation possible for MWOBs and the need to adjust the bonus points.

(b) The Vice President of the DMWP, with the concurrence of the Chief Executive Officer, has the authority to increase the technical and cost bonus points to ensure maximum MWOB participation in the contracting process.

## Subpart G—Conservatorship Contracting

**§ 1617.60 Policy and application.**

(a) The RTC recognizes the role of conservatorships in ensuring inclusion of MWOBs in RTC contracting and disposition activities to the maximum extent possible. Within six months after an institution has been placed into conservatorship, each conservatorship shall comply with DMWP policies and procedures.

(b) Accordingly, it is the responsibility of the Conservatorship and Contracting Departments to provide the DMWP with an opportunity to review and concur on:

(1) Requests for contracting services;

(2) Solicitation of Services (SOS) lists;

(3) SOS, contract, Statement of Work;

(4) Other contracting documents;

(5) Application of MWOB bonus points; and

(6) Certification/verification of contractor's MWOB status.

(c) In addition, the DMWP shall have the opportunity to participate in conferences, debriefings, negotiation meetings, final interviews, and any other meetings between RTC and MWOB contractors.

(d) Because of the large number of small awards emanating from conservatorships, the conservatorships are strongly encouraged, in all sole source contracts, to give preference to local MWOBs. The DMWP staff at RTC field offices shall work with the conservatorship contracting offices in identifying and certifying MWOBs, prior to the conservatorship offices soliciting for services.

## Subpart H—General Provisions Applicable to Law Firms

**§ 1617.70 Contracting objectives.**

(a) The Division of Legal Services shall, to the maximum extent possible, increase the level of legal fees paid annually on new assignments to MWOLFs to at least 20 percent. In addition, at least 10 percent of the total legal fees paid annually will be paid to minorities or women partners and other minority and women attorneys in non-MWOLFs.

(b) Further, the Division of Legal Services shall:

(1) Increase MWOLF participation and fees at each field office and in Washington in accordance with the RTC goals and objectives.

(2) Assist RTC attorneys and outside counsels in identifying both the capacity and the experience to provide the required legal services to the RTC.

(3) Encourage non-MWOLFs to utilize joint referral arrangements with MWOLFs to increase MWOLF participation and fees. Bonus points will be awarded to law firms that engage in joint referrals, and achieve specified levels of fees for MWOLF participation.

(4) Consistent with Division of Legal Services Policy No. 92–04, Minority and Women Partners Program, refer legal matters to the minority or women partners in non-MWOLFs who are identified as the RTC contact persons listed in the RTC Legal Information System (RLIS) and are principally responsible for the coordination of the legal services provided to the RTC. These partners are responsible for ensuring that RTC legal matters are successfully performed by other minority and women attorneys in non-MWOLFs.

(5) Copies of the document referred to in paragraph (b)(4) of this section are available from the RTC Public Reading Room, 801 17th Street NW., Room 100, Washington, DC 20434–0001.

**§ 1617.71 Program components.**

The Department of Legal Programs (DLP) shall:

(a) Design and implement a nationwide program, to identify MWOLFs capable of meeting the legal services contracting needs of the RTC. Implementation of the outreach program will entail having on-going communications with national, state and local bar associations, and other entities, and will participate in professional conventions and seminars sponsored and widely attended by MWOLFs.

(b) Coordinate with the Legal Division to identify and develop opportunities to increase referrals to MWOLFs, and minority and women partners in non-MWOLFs.

(c) Develop and implement outreach programs, such as seminars, conferences, and training workshops on legal contracting to increase the referrals and fees to MWOLFs and to minority and women partners in non-MWOLFs, and encourage the use of MWOLFs in joint referrals, such as co-counsel, joint counsel, joint venture arrangements, and consortia of MWOLFs.

(d) Monitor the implementation of the DMWP goals and objectives.

(e) Conduct on-site reviews of each field office and the Washington Office to determine compliance with the RTC's minority and women outreach goals and objectives.

**§ 1617.72 Certification.**

(a) A law firm seeking status as a MWOLF shall provide certification of that status. To this end, RTC must satisfy itself that the ownership, control and licensing requirements of the program are fulfilled. Therefore, on-site visits shall be performed by the DLP and may include OCOS.

(b) RTC has developed and implemented a certification policy and procedures designed to prevent fraudulent representations. Procedures have been established by which the DMWP shall review, evaluate, and approve notarized certification forms and accompanying documents from MWOLFs prior to any engagement.

(c) When an MWOLF is awarded an engagement with estimated fees of $100,000 and over, or applies for a new or renewed Legal Services Agreement (LSA), an on-site verification may be performed by DMWP to ensure that no changes have occurred in the eligibility for MWOLF status. Verification of a certification may also be required when a referral would result in an accumulation of over $100,000 in estimated fees to a MWOLF. Further, the DMWP reserves the right to perform an on-site verification upon certification, if fees under a referral would amount to less than $100,000. As part of its oversight role, DMWP also reserves the right to verify any MWOLF's eligibility at any time. If the eligibility of a firm as a MWOLF is questionable, the Legal Division's Outside Counsel Management Section (OCMS) may participate in the on-site verification.

(d) RTC shall be notified immediately of any factors that may affect MWOLF certifications as a result of changes in ownership, senior management or MWOLF joint referral participant(s).

(e) Any misrepresentations (including falsification of MWOLF certification), omissions or changes by the MWOLF, non-MWOLF or the joint referral participants with respect to MWOLF status shall be referred to the Legal Services Committee, which may result in termination of the Legal Services Agreement, termination or suspension of the engagement(s) and/or exclusion from the RTC legal contracting program, and/or referral to the Office of Inspector General.

(f) Any firm found ineligible for MWOLF certification shall be informed of its right to file an appeal to the Vice President, DMWP in Washington, DC.

## Subpart I—Competitive Legal Engagements

**§ 1617.80 Inclusion in solicitations.**

RTC shall ensure, to the maximum extent practicable, that MWOLFs and minority and women partners in non-MWOLFs who are the RTC contact persons are included in each competitive engagement solicitation.

**§ 1617.81 Participation by the Division of Minority and Women's Programs in solicitation and referral process.**

(a) The DMWP shall participate as a voting member on each of the RTC's Legal Services Committees to ensure that the evaluation of MWOLFs for potential outside counsel engagements is consistent with the overall objectives of inclusion, to the maximum extent practical, and where applicable, that the award of technical and cost bonus points to MWOLFs, and non-MWOLFs with qualifying joint referral arrangements with MWOLFs, is assigned appropriately.

(b) The DMWP staff may participate in the initial review and Statement of Work preparation to establish milestones, specific task descriptions and law firm responsibilities. The DMWP shall participate in the source list preparation to ensure inclusion of MWOLFs.

(c) The DMWP shall ensure that the following requirements for competition are fair, equitable and consistent:

(1) The selection criteria for notices or issuance of RFPs;

(2) The solicitation language; and

(3) The engagement parameters, including reasonable standards for substantive, technical and scoring criteria.

(d) The DMWP, in consultation with the Legal Division, shall participate in the preparation of responses to questions concerning the RTC's Minority and Women Outreach Program received from offerors.

(e) The technical and cost bonus points shall be assigned prior to selection of the competitive range.

(f) In the post-engagement phase, the DMWP may participate, in conjunction with OCMS, in periodic site visits conducted by the Legal Division of outside counsel(s) to review contractor compliance with the RTC's goals and objectives regarding MWOLFs and minority and women partners in non-MWOLFs.

## Subpart J—Joint Referrals and Representations

**§ 1617.90 General.**

(a) A joint referral will be used to combine the resources of two or more law firms. MWOLFs with experience in the area of the referral will be paired with other MWOLFs or with non-MWOLFs that have more experience in the same area or have greater resources to provide legal services to the RTC.

(b) All joint referrals to outside counsel will provide the maximum opportunity possible for MWOLFs to participate in the engagement. RTC outside counsel shall implement this policy in a manner consistent with RTC's overall legal contracting policies and procedures. As MWOLFs become more experienced in RTC legal issues, their level of participation in matters referred pursuant to the Joint Referral Program, as well as the fees they are paid, shall increase.

(c) Written justification will be provided for a referral made pursuant to the joint referral exemption in the Legal Division Policy No. 92–03, Statement of Policy and Procedures Concerning Limitations Upon the Use of Outside Counsel, (Fee Cap Policy) as amended.

(d) The DLP, in conjunction with the Legal Division, shall review the joint referral arrangement. The agreement must set forth the distribution of legal fees and work for each firm. This agreement shall apply throughout the term of the engagement. These arrangements must be in conformance with Legal Division Policy No. 92–02, Joint Referrals and Representation Program, as amended.

(e) All arrangements must be approved by the RTC Legal Services Committee.

(f) The overriding objective of these arrangements and others pursuant to § 1617.91 is that less experienced MWOLFs receive sufficient training in the relevant issues while pursuing a matter as cost effectively as possible.

(g) To qualify for bonus points, at least 25 percent of the fees shall be earned by a MWOLF.

(h) Copies of documents referred to in paragraph (c) and (d) of this section are available from the RTC Public Reading Room, 801 17th Street, NW., room 100, Washington, DC 20434–0001.

**§ 1617.91 Joint referral agreements.**

(a) Outside counsel shall prepare and execute a Joint-Venture Agreement, a Joint-Counsel Agreement, or a Consortium Agreement. Each such agreement must include:

(1) The name of each firm, its role and responsibilities;

(2) The percentage of substantive work allocated to each firm;

(3) Estimated legal fees to be generated by each firm;

(4) A requirement for each engagement under the agreement that a

lead attorney will be designated and a description of the duties and responsibilities of this individual;

(5) Assurances that outside counsel will cooperate in any oversight, review, study or survey, as may be required;

(6) A statement that the minority or women owned law firm is a certified RTC MWOLF;

(7) A statement that the joint referral arrangement is entitled to MWOLF bonus points, if it meets the minimum 25 percent MWOLF participation requirement; and

(8) A statement that, if engaged, the firm will implement the joint referral agreement submitted with its proposal to provide the approved percentage of MWOLF participation and fees.

(b) The RTC Oversight Attorney shall be encouraged to prepare the MWOLF Co-Counsel engagement memorandum, said memorandum to include:

(1) The name of each firm, their role and responsibilities;

(2) An indication of the percentage of substantive work allocated to each firm;

(3) Estimated legal fees to be generated by each firm;

(4) A requirement for each engagement under the agreement that a lead attorney will be designated and responsibilities of this individual;

(5) Assurances that outside counsel will cooperate in any oversight, review, study or survey, as may be required;

(6) A statement that the minority or women owned law firm is a certified RTC MWOLF; and

(7) A statement that, if engaged, the RTC Oversight Attorney will implement the joint referral agreement to provide the approved percentage of MWOLF participation and fees.

### § 1617.92 Other arrangements.

Other forms of affiliation between less experienced MWOLFs and more experienced MWOLFs or non-MWOLFs are available and are encouraged for work on a particular matter or for a specified period of time.

### § 1617.93 MWOLF contracting requirements.

(a) For the purposes of this section, any referral to outside counsel constitutes an engagement.

(b) Effective December 17, 1993, when RTC enters into or modifies any engagement for the provision of legal services to the RTC for which the contractor would receive fees or other compensation in an amount equal to or greater than $500,000:

(1) An MWOLF must be included in the referral as a subcontractor. This requirement applies if the arrangement is with a single outside counsel whether or not such outside counsel is an MWOLF or; outside counsel consists of a joint referral or co-counsel relationship.

(2) A subcontractor MWOLF will be allocated not less than 10 percent of the substantive legal work and commensurate fees. However, if there is a joint counsel or co-counsel referral relationship in which an MWOLF has been allocated at least 50 percent of the substantive legal work and commensurate fees, a subcontractor MWOLF will be allocated no less than 5 percent of the total.

(c) The RTC may exempt a referral from the requirements of paragraph (b) of this section if the Chief Executive Officer of the Corporation determines, through written documentation, that imposing such a joint representation requirement would:

(1) Substantially increase the cost of the engagement performance; or

(2) Undermine the ability of the majority firm to perform its obligations under the engagement.

(d) Reports and notarized certifications subject to 18 U.S.C. 1001.

(e) The RTC, through a written determination by the Chief Executive Officer, may grant a waiver from the requirements of paragraph (b) of this section for any engagement, provided that the majority firm has certified that no eligible MWOLF is available and has provided a basis for that conclusion.

### § 1617.94 Compliance.

The Legal Division shall evaluate the performance of law firms as it relates to their efforts and success in meeting DMWP goals and objectives. The evaluation may include on-site reviews of law firms to assess their compliance with DMWP policies. The DMWP will evaluate outside counsel's performance in relation to its implementation of the MWOLF joint referral agreement. When outside counsel is failing to meet its commitments under the MWOLF joint referral agreement, the DMWP will give written notice to the RTC Oversight Attorney, with a copy to the Legal Services Committee. When outside counsel's performance falls below the written commitment, the outside counsel may be given a 30-day period to resolve the non-compliance. When the compliance period expires, and outside counsel has not corrected the non-compliance, the matter shall be referred to the Legal Services Committee for appropriate remedial action, including but not limited to termination or suspension of the engagement and/or exclusion of the firm from the RTC legal contracting program.

## Subpart K—Minority and Women Partners Program

### § 1617.100 Minority and women partner referral.

(a) Legal matters may be referred to minority or women partners in non-MWOLFs who are the RTC contact persons. Pursuant to the Minority and Women Partners Program, the RTC will provide opportunities for these minority and women partners who are the RTC contact persons to render legal services to the RTC.

(b) The RTC expects that as minority and women partners in non-MWOLFs become more experienced in RTC legal issues, their level of participation in matters referred pursuant to the Partners Program, as well as the fees they generate, shall increase.

(c) The DLP, in conjunction with the Legal Division, will review the minority and women partner referral arrangements that must set forth the distribution of legal work and commensurate fees for each minority and woman partner within the firm. These proposals must be in conformance with Legal Division Policy No. 92–04, Minority and Women Partners Program, as amended.

(d) Copies of the document referred to in paragraph (c) of this section are available from the RTC Public Reading Room, 801 17th Street, N.W., Room 100, Washington, DC 20434–0001.

## Subpart L—Technical and Cost Bonus Points

### § 1617.200 Policy.

When reviewing and evaluating proposals submitted by firms eligible as MWOLFs or MWOLF joint referral, the RTC has the statutory authority to award bonus points in the technical and cost rating process. With regard to joint referral arrangements, (i.e., joint venture, joint counsel, MWOLF consortia or subcontracting arrangements), the RTC shall have the authority to provide bonus points to joint referral arrangements when at least 25 percent of the substantive work and commensurate fees are paid to MWOLFs. Additional bonus points may be awarded to joint referrals when a minimum of 40 percent of the substantive work and commensurate fees are paid to MWOLFs.

### § 1617.201 Application of technical and cost bonus points.

(a) In addition to each offeror's technical score, technical bonus points shall be awarded as a percentage of the total technical points achievable in the rating process.

(b) In addition to each offeror's cost score, cost bonus points shall be awarded as a percentage of the total cost points achievable in the rating process, in addition to each offeror's cost score.

(c) Beginning with the effective date of this final rule, the technical and cost bonus points shall be allocated as follows:

| Firm type | Percent technical | Percent cost |
|---|---|---|
| MWOLF or MWOLF Consortia | 15 | 10 |
| Joint Venture with at least 40 percent MWOLF legal fees | 15 | 10 |
| Joint Venture with at least 25 percent MWOLF legal fees | 10 | 5 |
| Joint Counsel or Subcontractors with at least 40 percent MWOLF legal fees | 10 | 5 |
| Joint Counsel or Subcontractors with at least 25 percent MWOLF legal fees | 5 | 2.5 |

(d) All non-MWOLF outside counsels who receive referrals in which fees and expenses are equal to or greater than $500,000 are required to satisfy the 10 percent MWOLF referral requirement. All MWOLF outside counsels who receive referrals in which fees and expenses are equal to or greater than $500,000 are required to satisfy the 5 percent MWOLF referral requirement. For non-MWOLF outside counsels requesting technical and cost bonus consideration, this 10 percent is deemed satisfied in cases where referrals are at least 25 percent.

### § 1617.202 Authority to adjust technical and cost bonus points.

(a) The DMWP shall periodically evaluate the RTC's application of bonus points. The review shall determine whether the Corporation is meeting its legislative mandate to ensure the maximum participation possible for MWOLFs and determine if there is a need to increase the bonus points.

(b) The Vice President of the DMWP, with the concurrence of the Chief Executive Officer, has the authority to increase the technical and cost bonus points applicable in evaluating proposals to the extent necessary to ensure the maximum participation for MWOLFs.

## Subpart M—General Procedures Applicable to Contractor Suspension and Exclusion, Contract Rescission, and Other Administrative Actions

### § 1617.300 Procedures for MWOBs.

(a) Once any RTC department or office recognizes and/or identifies a problem arising out of an award to a MWOB and alleges issues concerning action that may involve the suspension or the exclusion of a MWOB, the rescission of an award to a MWOB, or any other adverse action against the MWOB, the DMWP shall be notified in writing immediately. This includes emergency asset management and disposition matters arising out of an award to a MWOB.

(b) The DMWP shall have the opportunity to participate in the process, from identification of the alleged problem through resolution, to determine whether adverse or disciplinary action shall be taken against any MWOB as a result of any alleged problem.

(c) By including this § 1617.300, the RTC does not intend to create any right of action in private parties that would not otherwise exist.

### § 1617.301 Procedures for MWOLFs.

(a) Once the Legal Division or any other RTC department or office recognizes and/or identifies a problem arising out of a MWOLF referral which alleges issues concerning actions that may involve the suspension or the exclusion of a MWOLF, the rescission of a referral to a MWOLF, or any other adverse action against the MWOLF, the DMWP shall be notified in writing immediately. This includes emergency litigation matters, arising out of a referral to a MWOLF.

(b) The DMWP shall have the opportunity to participate in all phases of the process, (i.e., from the identification of the alleged problem through the resolution stage) to determine whether adverse or disciplinary action shall be taken against any MWOLF as a result of any alleged problem.

(c) In compliance with the RTC's Procedures Regarding Adverse Actions Affecting Minority- and Women-Owned Law Firms, the DMWP shall be notified immediately when the Legal Division refers a matter subject to said procedures to the Outside Counsel Conflicts Committee or to the Legal Services Committee. The Legal Division, in consultation with the MWP Division, will determine whether the RTC is required to take adverse or disciplinary action against a MWOLF, and, if so, will consult with DMWP regarding the course of adverse or disciplinary action to be taken.

(d) Nothing in this section precludes the Legal Division from taking an adverse action in an emergency situation.

(e) By including this § 1617.301, the RTC does not intend to create any right of action in private parties that would not otherwise exist.

## Subpart N—General Provisions Applicable to Program Compliance

### § 1617.400 Program compliance.

(a)(1) The RTC recognizes that the success of the MWOB and MWOLF programs involves commitment and leadership from senior management. The RTC pledges the continuing involvement of all levels of its staff in ensuring the success of these programs.

(2) Department of Policy, Evaluation and Field Management (DPEFM) staff dedicated to oversight and monitoring shall continuously assess the implementation of RTC policies, procedures, and guidelines for compliance with the goals of FIRREA, the RTC Funding Act of 1991, the RRIA, and the RTCCA to ensure the maximum inclusion of MWOBS and MWOLFs in the management and disposition of assets of failed thrifts. An oversight and evaluation program has been established utilizing a uniform assessment process to assure RTC's adherence to Minority and Women's Programs goals and objectives, including certification requirements and MWOLF contracting plan commitments.

(b) RTC field office shall be visited periodically by the DPEFM staff to:

(1) Review the effectiveness of RTC's efforts to assure the maximum inclusion and participation of MWOBs and MWOLFs in all of its programs and activities;

(2) Determine the effectiveness of the interface of the DMWP field staff with the contract program, sales offices, contractor oversight management, conservatorship, the legal division and administration staff;

(3) Evaluate and assess the results of the MWOB and MWOLF program activities; and

(4) Develop comprehensive performance assessments in accordance with established criteria and make recommendations for program improvements, including specialized technical assistance and training. These oversight and monitoring reviews shall serve, in part, as a basis for the annual performance appraisal of DMWP field managers.

(c) *Monitoring, evaluation and reporting.* The DPEFM shall track,

review and periodically report on the implementation of RTC's DMWP activities and accomplishments to RTC management, the Congress, and the public. These reports will address RTC's progress in utilizing MWOBs and MWOLFs including, but not limited to, identifying geographic and service categories in which MWOBs and MWOLFs are under represented.

**§ 1617.401 Performance appraisals.**

Adherence to, and assistance with, MWOB and MWOLF program policies shall be reflected in RTC Personnel Appraisals for senior and management officials to encourage performance and maintain individual accountability. All annual performance evaluations for such officials in each RTC office shall include a review of their success in meeting the goals and objectives of the RTC's Minority and Women's Programs.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 30th day of January, 1995.

Resolution Trust Corporation.

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

*Secretary.*

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# Part V

# Department of Health and Human Services

## Public Health Service

## 42 CFR Part 100

## National Vaccine Injury Compensation Program Revision of the Vaccine Injury Table; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 100**

**RIN 0905–AD64**

## National Vaccine Injury Compensation Program Revision of the Vaccine Injury Table

**AGENCY:** Health Resources and Services Administration, PHS, HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the existing regulations governing the National Vaccine Injury Compensation Program (VICP) by adding a new section regarding the Vaccine Injury Table (Table) to the regulations, pursuant to section 312 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Public Health Service Act (the Act). The VICP provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The Vaccine Injury Table included in the Act establishes presumptions about causation of certain illnesses and conditions, which are used by the Court to adjudicate petitions. The amendments to the Vaccine Injury Table will affect only those petitions filed for compensation under the VICP after the effective date of this rule.

**EFFECTIVE DATE:** This regulation is effective March 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Evans, M.D., Chief Medical Officer and Deputy Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, (301) 443–4198, or David Benor, Senior Attorney, Office of the General Counsel, (301) 443–2006.

**SUPPLEMENTARY INFORMATION:**

### Introduction and Procedural History

On August 14, 1992, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services (the Secretary), published in the **Federal Register** (57 FR 36878) a Notice of Proposed Rulemaking (NPRM) to amend the Vaccine Injury Table (the Table). (A correction notice to the NPRM was also published on September 11, 1992, 57 FR 41809). The NPRM was issued pursuant to section 2114(c) of the Act, which authorizes the Secretary to promulgate regulations to modify the Table.

As stated in the preamble to the proposed rule, under section 312 of the National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), Congress mandated that the Secretary review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines. The Secretary entered into a contract with the Institute of Medicine (IOM), as recommended by Congress, to perform this review. The IOM published a report of its review entitled, ''Adverse Effects of Pertussis and Rubella Vaccines,'' on August 27, 1991 (hereinafter ''IOM Report''). The Public Health Service Task Force on the VICP evaluated the IOM report and made the initial recommendations regarding possible revision of the Table.

These recommendations were reviewed by a special subcommittee of the National Vaccine Advisory Committee (NVAC) (a committee authorized under section 2105 of the Act). The subcommittee overwhelmingly endorsed all of the proposed revisions except for the addition of chronic arthritis to the Table. The full NVAC endorsed the subcommittee's recommendations for revising the Table.

The Advisory Commission on Childhood Vaccines (ACCV), whose membership by statutory directive reflects a variety of views relating to childhood immunizations (authorized under section 2119 of the Act), considered the NVAC report as well as the PHS Task Force recommendations. The ACCV deliberations included public policy considerations, whereas the NVAC charge was to consider only the scientific issues raised by the existing Table, the recent IOM report, and other scientific information. The ACCV voted approval of all of the PHS Task Force recommendations except for the removal of the condition of Encephalopathy. The ACCV voted unanimously to retain Encephalopathy on the Table provided the existing definition in the Aids to Interpretation was clarified. The Secretary proposed changes to the Table after reviewing the recommendations of these three entities.

As provided by section 2114(c) of the Act, the Department provided for a 6-month comment period, which closed on February 11, 1993. On December 3, 1992, the Department held a public hearing for the purpose of receiving oral testimony on the proposed rule.

During the process of analyzing the comments received in response to the NPRM, the Agency became aware of the imminent publication of a 10-year follow-up study to the National Childhood Encephalopathy Study (NCES) (Madge N., Diamond J., Miller D., Ross E., McManus C., Wadsworth J., Yule W. The National Childhood Encephalopathy Study: A 10-year follow-up. A report of the medical, social, behavioural and educational outcomes after serious, acute, neurologic illness in early childhood. Developmental Medicine and Child Neurology 1993; Supplement No. 68;35(7):1–118; Miller D.L., Madge N., Diamond J., Wadsworth J., Ross E. Pertussis immunization and serious acute neurological illness in children. British Medical Journal 1993; 307:1171–1176, hereinafter ''Miller study.''). Because the Miller study looked specifically at the relationship between vaccine administration and subsequent neurological damage, the Department determined that it should not proceed with publication of the final rule until there had been a sufficient opportunity to consider the conclusions of the new Miller study. Accordingly, the Department asked the IOM to convene a Committee for purposes of evaluating the Miller study in light of the conclusions of its initial report. On March 2, 1994, the Institute of Medicine issued a report entitled ''DPT Vaccine and Chronic Nervous System Dysfunction: A New Analysis.'' On March 24, 1994, the Department published a notice in the **Federal Register** affording members of the public and additional 30 days to comment on the Miller study and the IOM report. See **Federal Register** March 24, 1994, (59 FR 13916).

The Agency also asked a subcommittee of the NVAC to review the IOM's conclusions regarding the implications of the Miller study. On March 15, the NVAC subcommittee met to review (among other things) the Miller study. The subcommittee was composed of members of the NVAC, and received input from outside experts from the fields of epidemiology, pediatric infectious disease, and pediatric neurology. The views of the NVAC are discussed below where relevant.

The ACCV reviewed the IOM report on the Miller study at its meetings in March and June, 1994. In addition, the ACCV was asked to provide comments during the additional public comment period. Comments received from two individual Commission members will be discussed below. At the June meeting, the Commission discussed in detail the Miller study and the IOM report. The consensus of the Commission was that the original table in the statute requires modification to make it consistent with current medical and scientific knowledge regarding adverse events associated with certain vaccines. The Commission was split, however, on the appropriate frame of reference for modifying the Table. Some

Commission members expressed the view that the starting point for revisions to the Table should be the original Table in the statute. The other commissioners agreed that the Secretary should further refine the Table, but that the starting point for additional revisions should be the modified Table as published in the NPRM on August 14, 1992.

The Department has listened carefully to the Commissioners' concerns. After weighing all the varied opinions expressed at the June meeting, as well as the written comments received from two commission members, the Department has decided that a final rule which is a revised and refined version of the proposed rule published in 1992 will reflect best the scientific evidence. However, in drafting the final rule, the Department made many of the changes suggested by members of the Commission. These changes will be explained below. In this regard, the Department recognizes that one of the objectives of the National Vaccine Plan, which was released recently by the National Vaccine Program Office/OASH, is to ensure that the Vaccine Injury Table is updated periodicall to reflect the latest scientific knowledge. The final rule is consistent with this goal, as well as the statutory directive that the Secretary revise the Table.

Although by law the regulation will only affect those petitions filed after the effective date specified above, the Department encourages the Special Masters of the U.S. Court of Federal Claims to apply the scientific findings which form the basis of the revised Table where appropriate. For instance, in cases where petitioners are intending to prove causation in fact, the IOM's conclusions regarding causation may be relevant for consideration by the Special Master. In addition, the Special Master could find, based on the conclusions of the IOM, that a particular injury was due to a factor unrelated to vaccine administration. Prior to promulgation of this rule, several Special Masters viewed the IOM report as instructive regarding certain illnesses and conditions and their relationship to vaccine administration. The Department hopes that the use of the IOM report continues, and that the findings and conclusions made by the Secretary in promulgating this rule will be applied by the Masters where the facts of the case make it appropriate to do so. In some cases, as explained below, the Secretary's findings as set forth in the NPRM at 57 FR 36879 were not incorporated into the final rule. This decision does not affect the Secretary's findings and should not deter the Special Masters from applying the findings where appropriate.

The Department received 41 written comments and five oral comments on the NPRM, and five comments in response to the **Federal Register** Notice to Extend the Public Comment Period (March 24, 1994). Comments were received from health professional organizations, parent organizations, medical professionals, attorneys, and the general public. All comments were carefully considered. The Department's responses to the comments are discussed below in two separate sections. Section I discusses the comments addressing legal issues, and Section II discusses those comments addressing medical issues. The discussion does not address comments that either generally supported or generally criticized the proposed Table changes without making a specific point. In preparing this final rule, the Department also made a number of changes, both editorial and substantive in nature. The substantive changes are discussed where appropriate as follows:

## I. Legal Issues

### *The Secretary's Authority To Promulgate the Regulation*

Several commenters suggested that the Department had exceeded its authority in promulgating the regulation. First, commenters argued that this is a function which belongs to the legislative branch and which cannot be delegated to the Department based on the Separation of Powers doctrine. The Department disagrees with this legal argument for several reasons. In enacting a particular statutory scheme, Congress will often leave particular gaps with instructions to the Department charged with executing the statute to promulgate regulations to fill the gaps and interpret the statutory language. *See Chevron* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). In promulgating regulations, the Department is limited to the authority delegated by Congress, and is obligated to act consistent with Congressional intent. *See Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988). Pursuant to these basic principles of administrative law, the Secretary is promulgating this regulation to amend the Vaccine Injury Table.

The statute explicitly authorizes the Secretary in section 2114(c) of the Act to modify the Table and states that the ''Secretary may promulgate regulations to modify * * * the Vaccine Injury Table.'' See 42 U.S.C. 300aa–14(c)(1). The statute further provides that ''a modification of the Vaccine Injury Table under paragraph (1) may add to, or delete from, the list of injuries, disabilities, illnesses, conditions, and deaths for which compensation may be provided, or may change the time periods for the first symptom or manifestation of the onset of the significant aggravation of any such injury, disability, illness, condition, or death.'' See 42 U.S.C. 300aa–14(c)(3). Under section 312 of Pub. L. 99–660, Congress mandated that the Secretary review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines. As mandated by the statute, after completion of this study (undertaken by the Institute of Medicine), and the consultation required by section 2114(c) of the Act, the Department proposed the revisions to the Table. In so doing, the Department was acting exactly within the authority delegated to it by the Congress.

Further, as stated in the preamble to the Notice of Proposed Rulemaking, the legislative history explains that Congress intended the Secretary to modify the Table. The Conference Report states as follows:

> The Committee recognizes that there is public debate over the incidence of illnesses that coincidentally occur within a short time of vaccination. The Committee further recognizes that the deeming of vaccine-relatedness adopted here may provide compensation to some children whose illness is not, in fact, vaccine-related. The Committee anticipates that the research on vaccine injury and vaccine safety now ongoing and mandated by this legislation will soon provide more definitive information about the incidence of vaccine injury and that, when such information is available, the Secretary or the Advisory Commission on Childhood Vaccines * * * may propose to revise the Table, as provided below in section 2114 [Initial Table]. Until such time, however, the Committee has chosen to provide compensation to all persons whose injuries meet the requirements of the petition and the Table and whose injuries cannot be demonstrated to be caused by other factors.

See H.R. Rept. 99–908, Part 1, September 26, 1986, page 18 (reprinted in 1986 U.S. Code Cong. and Admin. News, Vol. 6, page 6359). This passage indicates that the Department is acting consistent with Congressional intent.

At least two commenters argued that the Department exceeded its authority in modifying the ''Qualifications and Aids to Interpretation'' (Qualifications) found in section 2114(b) of the Act. This argument, too, is misplaced. First, section 312 requires that the Secretary make findings regarding which illnesses

and conditions can reasonably be determined to be caused by certain vaccines. It further requires the Secretary to make findings regarding ''the circumstances under which such causation or aggravation can reasonably be determined to occur.'' 42 U.S.C. 300aa–1 note. The purpose of the Qualifications and Aids to Interpretation is to describe those circumstances under which certain conditions occur. Congress stated that the Qualifications provide ''various descriptions and definitions that the Committee intends be used in interpreting the meaning of the Table.'' See H.R. Rept. 99–908, Part 1, September 26, 1986, page 19 (reprinted in 1986 U.S. Code Cong. and Admin. News, Vol. 6, page 6360). Given that Congress required the Secretary to make findings regarding the circumstances under which causation can occur, and that she was then required to promulgate regulations as a result of such findings, she could not have fulfilled her obligations under section 312 without modifying the Qualifications as well as the Table itself.

Moreover, the statutory language and the legislative history quoted above indicate that the Qualifications must be viewed as part of the Table. The statute states that ''the following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in subsection (a).'' See 42 U.S.C. 300aa–14(b). Thus, Congress intended the Table and the Qualifications to be viewed as one unit because the Qualifications explain and clarify the terms of the Table. It stands to reason, therefore, that if the Table is changed, the Qualifications must be changed accordingly.

In fact, Congress anticipated that changes to the Table would require similar changes to the Qualifications and Aids to Interpretation in order to guarantee that the two sections are consistent. The statute states that ''if a provision of the table to which paragraph (1), (2), (3), or (4) [the paragraphs of the Qualifications and Aids to Interpretation] applies is revised under subsection (c) or (d), such paragraph shall not apply to such provision after the effective date of the revision unless the revision specifies that such paragraph is to continue to apply.'' (42 U.S.C. 300aa–14(b)(4)). Thus, the Qualifications contained in the original statute become null and void once that initial Table is changed, unless the Secretary specifies that they are to apply. Implicit in this authority is the authority to promulgate by regulation Qualifications applicable to the revised Table.

Two commenters stated that the regulation exceeded the Department's authority by attempting to prescribe elements of proof necessary to prevail in a petition for vaccine compensation. They argued that this function is reserved to the United States Court of Federal Claims. As explained above, the Secretary is authorized to revise the Qualifications as well as the Table. The statute states that the Secretary may ''add to, or delete from, the list of injuries, conditions, and deaths for which compensation may be provided or may change the time periods for the first symptom or manifestation of the onset or the significant aggravation of any such injury, disability, illness, condition or death.'' The original Table and Qualifications delineate those elements which must be proven in order to take advantage of a presumption of causation.

In this regard, the commenters should understand the function of the Table. The purpose is not to set forth standards of proof for establishing causation-in-fact. Rather, the purpose is to set out a standard for establishing presumed causation, which, absent a finding of a factor unrelated to the vaccine, will allow a petitioner to receive compensation without the burden of proving causation for those conditions included on the Table. Accordingly, the Qualifications properly set out standards for defining those conditions on the Table. Petitioners remain free to establish causation in fact by producing credible scientific information peculiar to their conditions.

Although the commenters assert that the Department is impermissibly creating elements of proof, the Qualifications as drafted originally contain numerous requirements that are, in essence, elements of proof. For example, the paragraph describing the requirements for a 'residual seizure disorder' states the number of seizures which must have occurred in the year after the vaccine was administered for the petitioner to be found to have suffered a residual seizure disorder. In addition, section 2114(b)(3)(A) of the Act describing the definition of encephalopathy states that ''Encephalopathy usually can be documented by slow wave activity on an electroencephalogram.'' Similarly, the revised Qualifications indicate the elements which must be proven to establish a presumption of causation for those injuries and conditions listed in the modified Table.

In objecting to this aspect of the Qualifications, the commenters assume erroneously that the revised Qualifications alter the Special Master's role in determining whether a Table Injury has been proven. The Special Master's role is to consider the information contained in the record, including oral testimony, medical records and medical opinion. The Master must weigh the evidence, examine the credibility of the witnesses, reconcile the points of disagreement between the parties and issue a final decision. The revised Qualifications do not alter this role. As did the former Qualifications, they require the petitioner to demonstrate a Table condition by proving that various events occurred. The Special Master must still analyze the evidentiary issues which arise in the context of attempting to prove a Table injury.

*The Effect of the Regulation on Other Statutory Sections*

One commenter stated that the Qualifications and Aids to Interpretation are inconsistent with section 2113(b) of the Act, which permits the Special Master to find that the injury occurred within the Table period even if the symptoms were not recorded or were incorrectly recorded in the medical records. The commenter specifically took issue with the section of the revised Qualifications which states that an ''an acute encephalopathy should be sufficiently severe to require health care intervention and hospitalization.'' In addition, during the June 1994 meeting of the ACCV, at least one member of the Commission objected to this requirement as being overly restrictive because hospitalization is required. The Commission member voicing this concern felt that the rule should recognize that not all parents would respond to a possible encephalopathic event by taking the child to the hospital.

The revised Qualifications and Aids to Interpretation are not inconsistent with section 2113(b) of the Act, because the Special Master may still find that a preponderance of the evidence indicates that the encephalopathy was severe enough to require medical intervention or hospitalization, but that because of error or omission the event was either not recorded or was incorrectly recorded. In addition, under the revised Qualifications, although medical records should be provided in most cases, the language ''sufficiently severe'' is meant to be consistent with section 2113(b)(2) of the Act and would permit a finding in favor of petitioner if the Special Master found that a preponderance of the evidence indicated that the injury was sufficiently severe such that medical intervention should have been sought.

In the Department's view, the original statute does not intend the Special Master to find that the injury occurred within the Table period in the absence of any records recording the injury, unless the petitioner is able to produce clear, cogent, and consistent testimony to explain the absence of records. The Court has found in favor of petitioners in the absence of corroborating medical records where the preponderance of evidence, including oral testimony, demonstrates that the adverse event occurred within the Table timeframe. The requirement contained within the revised Aids to Interpretation is meant to include only those events which are so serious that they require medical intervention (whether or not medical intervention was actually sought), and are, therefore, properly referred to as encephalopathies. The requirement is simply meant to exclude those conditions which are not serious enough to warrant medical attention. These types of minor symptoms (e.g., excessive crying, sleepiness) were specifically excluded from the definition of encephalopathy contained within the original statute, but have been alleged by some petitioners to be signs and symptoms of an encephalopathy. The revised Qualifications and Aids to Interpretation simply seek to make clear the intent of Congress.

The Department recognizes, however, that the language ''should be sufficiently severe,'' is somewhat confusing. In addition, the Department recognizes that the phase ''medical intervention and hospitalization'' is redundant, and open to various interpretations. Accordingly, the regulatory language in § 100.3(b)(2)(i) as proposed has been revised to read ''An acute encephalopathy is one that is sufficiently severe so as to require hospitalization.'' The Department is making this change in the interests of clarity, consistent with the explanation articulated above. In order to demonstrate a Table encephalopathy, the petitioner must prove that the injury was indeed serious enough to warrant hospitalization, whether or not records of such hospitalization exist. Certainly, however, contemporaneous medical records are of extreme importance in proving that a Table injury occurred.

*The Sufficiency of the IOM Report as the Basis for the Changes to the Vaccine Injury Table*

Several commenters stated that the Department relied on insufficient data in proposing modifications to the Table. These commenters argued that Congress intended that more definitive information be available before the Table is revised. The commenters took issue with both the conclusions of the Institute of Medicine and the Department's interpretation of those conclusions. Section 312 of Pub. L. 99–660 (42 U.S.C. 300aa–1, note) required the Secretary to complete a review of ''all relevant medical and scientific information regarding the connection between various vaccines and specified adverse events.'' The Secretary was then required to publish in the **Federal Register** findings regarding ''whether each of the illnesses or conditions set forth in subsection (a) can reasonably be determined in some circumstances to be caused or significantly aggravated by pertussis containing vaccines.'' *See* 42 U.S.C. 300aa–1, note. Simultaneously, the statute required that the Secretary propose changes to the Table as a result of the findings.

This language indicates that Congress intended that the Secretary modify the Table consistent with the conclusions of the review undertaken by the Institute of Medicine. Nowhere is there a requirement, however, that the causal connection between the administration of vaccines and certain adverse events be definite and conclusive before any changes are made. The IOM concluded that ''the evidence is insufficient to indicate a causal relation between vaccines containing pertussis'' and certain adverse events. Because the evidence was determined as ''insufficient,'' the Department concluded that it could not ''reasonably determine'' that a causal connection exists, and the Table is being revised accordingly.

The section of the legislative history cited by the commenter in support of the objection states that ''the Committee anticipates that the research on vaccine injury and vaccine safety now ongoing and mandated by this legislation will soon provide more definitive information about the incidence of vaccine injury and that, when such information is available, the Secretary or the Advisory Commission on Childhood Vaccines (discussed below in section 2119) may propose to revise the Table as provided below in section 2114.'' This statement merely indicates a recognition by Congress that the original Vaccine Injury Table was overinclusive, and that more research would yield *more* definitive information. As described in the preamble to the proposed regulation, and consistent with the statutory requirements, the findings of the Institute of Medicine represented a comprehensive review of the existing evidence as well as numerous opportunities for comment from various experts and members of the public. The systematic process undertaken by the Department to evaluate the findings of the IOM demonstrates that the Department reviewed sufficiently the findings of the IOM and their applicability to the Table. These findings clearly indicated that the original Table was out of step with the state of medical knowledge. Accordingly, the Secretary was obliged to propose revisions. Although the IOM's original conclusion was modified somewhat in the 1994 report regarding pertussis vaccine and chronic nervous system damage, the Department has determined that the major changes to the Table published in the NPRM reflect the IOM's latest conclusions regarding this difficult issue. Nevertheless, as discussed below, the final rule reflects some minor changes made to the proposed rule in light of the Miller study and comments provided to the Department in connection with this study.

Two commenters felt that the Department had ignored relevant information in revising the Table. Specifically, they believed that the Department should have viewed the claims that have either been compensated or conceded by the Department as proof that the presumptions conferred by the Table are accurate. However, the fact that a particular case has either been adjudicated compensable or conceded by HHS does not imply that a medical conclusion regarding vaccine-relatedness has been made. The process of deciding claims is based on whether the claim fits the parameters of the Table, or whether causation has been proven. Most claims have been adjudicated ''table cases,'' meaning that the petitioners were afforded the presumption of causation conferred by the statute. This determination involves an analysis of various evidentiary and other legal issues, but does not prove or disprove whether a causal relationship exists in fact between certain vaccines and adverse events. The outcome of these cases does not have any bearing on whether the Table should be revised to reflect the findings of the Institute of Medicine.

One commenter referred to a letter written by the organization Dissatisfied Parents Together on May 8, 1991, to then Secretary Sullivan regarding concerns that members of the Immunization Practices Advisory Committee (ACIP) who have advised pharmaceutical companies, or conducted research funded by such companies may have a conflict of interest which precludes their serving

on the ACIP. The Department has determined that this comment is irrelevant as far as the modification of the Table is concerned. In undertaking its review, the IOM did not rely on the views of members of the ACIP or the work-product of that Committee.

*The Effect of the Proposed Changes on the Vaccine Injury Compensation Program*

Two commenters suggested that the result of the proposed revisions would be an increase in the transaction costs of the Program because many petitioners will pursue their cases by attempting to prove causation-in-fact. The Department has taken this concern into consideration and has concluded that the benefits of the proposed regulation outweigh the possibility of more protracted and complex hearings. The intent of the regulation is to make the Table consistent with medical knowledge regarding the relationship between vaccines and certain adverse events. The Department notes that Congress recognized that the original Vaccine Injury Table would permit individuals whose conditions were not related to vaccine administration to be adjudicated eligible for compensation. If the Table is revised to permit compensation only in those cases where vaccine relatedness is more accurately proven, greater resources will be available to compensate those truly deserving of compensation.

In a similar vein, several commenters expressed concern that the Department was seeking to prevent children deserving of compensation from receiving assistance under the Program. In fact, exactly the opposite is true. The revised Table merely affects the presumption of causation available to certain petitioners. Petitioners will, of course, continue to have the option of proving causation by a preponderance of evidence if they are unable to prove a Table injury. Moreover, the Department recognizes that there is a desperate need for parents to obtain resources to cover the significant medical costs of caring for a sick child. However, the intent of the VICP was to compensate only those individuals whose injuries are vaccine-related. The proposed regulation is simply an attempt to come closer to realizing this goal than was possible with the language of the original Vaccine Injury Table.

Three commenters suggested that the proposed regulation would result in an increased number of civil actions filed against vaccine manufacturers and administrators. In enacting the National Childhood Vaccine Injury Act, Congress determined that one of the goals of the Act was to reduce the number of civil actions filed against vaccine administrators and manufacturers. The other major goal was to provide compensation to those individuals whose conditions were caused by vaccines. *See* H.R. Rept. 99–908, Part 1, September 26, 1986, page 6 (reprinted in 1986 U.S. Code Cong. & Admin News, Vol. 6, page 6347). The Committee recognized, however, that the Table would possibly provide compensation to some children whose illnesses are not vaccine-related, but that further research and modifications to the Table would result in a more equitable distribution of funds. In balancing these two Congressional goals, the Department has determined that the benefits of fulfilling the latter requirement outweigh the risk that an increased number of civil actions will be filed against vaccine administrators or manufacturers.

Furthermore, the Department believes that the combined effect of the IOM's review and this regulatory action may reduce the extent of tort litigation by giving the courts (and potential plaintiffs weighing the wisdom of filing suit) definitive guidance as to the state of scientific knowledge regarding vaccine-related injuries. As causation must typically be proven in tort actions, the Department believes that the findings on these issues may well reduce the amount of tort litigation and may allow easier resolution of any such claims that are litigated.

## II. Medical Issues

*The Department's Interpretation of the IOM Report*

Six commenters suggested that the Department's findings are a misinterpretation of the IOM Report. In the Department's view, however, the proposed changes do reflect accurately the conclusions of the IOM report.

Both the NPRM and the final rule (with some revisions are discussed below), reflect most closely the package of recommendations as developed by the PHS Task Force, reviewed by the NVAC, and endorsed by the ACCV. The proposed changes are in accordance with the scientific findings of the IOM Committee. In instances where the IOM found information suggesting a causal relation *and* continued effects, the Department acted to ensure coverage under the Program (e.g., adding chronic arthritis to the Table). However, where the IOM found that the evidence did not support a causal relation and continued effects, the Department removed the legal presumption of causation by removing or redefining the current injury listed on the Table. The fact that the proposed revisions received overwhelming approval from three independent science and health policy committees, and the endorsement of two national health professionals associations (American Academy of Pediatrics and American Medical Association), confirms the basic soundness of the initial proposed revisions.

One of the commenters addressing the Miller study suggested that in light of the 1994 IOM Report, the Department should rescind certain findings made after release of the 1991 Report and published in the preamble to the NPRM. In the NPRM, published on August 14, 1992, the Department made certain findings as required by section 312(b) of Pub. L. 99–660 (42 U.S.C. 300aa–1 note). The Department has reviewed these findings again in light of the commenter's concerns, and has determined that the findings remain valid. In fact, the conclusions of the IOM and the NVAC subcommittee (discussed below) with respect to pertussis vaccine and chronic neurological damage confirm the soundness of findings three and four as listed in the NPRM. These findings read, in pertinent part, as follows:

> 3. The evidence is insufficient to indicate a causal relation between vaccines containing pertussis and: Epilepsy * * * chronic neurologic damage, * * * learning disabilities and attention-deficient disorder, * * * or permanent neurologic damage or death following hypotonic-hyporesponsive episodes.
>
> 4. The evidence is consistent with a causal relation between vaccines containing pertussis and? Acute encephalopathy and shock and ''unusual shock-like state.''

The recent IOM report was confined to a review of the Miller study, and is, therefore, limited to the circumstances of that particular study. Given the conclusions articulated by the IOM and the accompanying caveats, and the discussion and conclusions of the NVAC subcommittee, the Department concludes that the findings published with the NPRM reflect best the state of scientific knowledge. It should be noted again that in drafting the revised Qualifications and Aids to Interpretation, the Department decided not to eliminate the presumption of causation for encephalopathy despite the conclusions of the 1991 IOM study. Rather, consistent with the recommendation of the ACCV, the Department included a presumption of vaccine causation for those individuals who experience an acute encephalopathy within 3 days after vaccination, who go on to suffer 6

months of residual effects, and who experience chronic neurological dysfunction. This presumption is consistent with the IOM's conclusions articulated in its 1994 report.

Four commenters suggested that the IOM's causation category of ''insufficient evidence'' should not be interpreted to mean that DTP vaccine does not cause the condition. Furthermore, they suggest that both the IOM and the Department present no data which support the proposition that acute encephalopathy, subsequent to the receipt of a pertussis vaccine, has a more benign neurological outcome than acute encephalopathies from other agents. The Department has considered these comments but maintains that the IOM report provides a foundational basis for the proposed changes.

The 1991 IOM report concluded the evidence was insufficient to indicate a causal relationship between vaccines containing pertussis and chronic neurological damage for a variety of conditions including encephalopthy, shock collapse or Hypotonic-Hyporesponsive Episode (HHE), epilepsy, and other neurologic and non-neurologic disorders. Comments that expressed concern over this classification focused for the most part on acute encephalopathy and chronic neurologic damage, while a few discussed shock-collapse (HHE) or recurrent seizures (epilepsy). The issue of encephalopathy following pertussis vaccination is a difficult one. On one hand, in its 1991 Report, the TOM found evidence ''consistent with a familiar evidence ''consistent with a causal relation'' for acute encephalopathy, yet on the other hand, it decided there was ''insufficient evidence'' regarding *chronic* nuerologic damage. Due to limitations in the data, the IOM could not conclude with any certainty whether there is any causal relationship between pertussis vaccine and shock-collapse (HHE), epilepsy, or any of the other disorders under this classification category. In its 1994 report addressing the Miller study, the IOM concluded that ''evidence is insufficient to indicate whether or not DTP increases the overall risk in shildren of chronic nervous system dysfunction.'' They concluded further, that the ''balance of evidence is consistent with a causal relation between DTP and the forms of chronic nervous system dysfunction described in the NCES in those children who experienced a serious acute neurological illness within 7 days after vaccine administration.'' The IOM also concluded, however, that ''the evidence remains insufficient to indicate the presence or absence of a causal relation between DTP and chronic nervous system dysfunction under any other circumstances.'' *See* 1994 IOM Report, Executive Summary.

Because section 2111(c) of the Act requires that a Petitioner must show 6 months of residentual effects of a Table injury, a finding of a relation pertussis-containing vaccines and acute, but not chronically, does not justify the presumption of causation for long-term neurologic damage. However, should the evidence show that abnormal neurologic signs continued beyond the acute state, and therefore the injured indidivual never returned to a ''normal neurological state,'' than title may be granted. This conclusion is consistent with the 1994 IOM report.

The language of section 312 of Pub. L. 99–660 (42 U.S.C. 300aa–1, note) also supports the Department's conclusion. The IOM determined in its 1991 report that the evidence is insufficient to support a conclusion that a causal relationship between DTP vaccine and chronic neurologic damage exists. The 1994 IOM finding was limited to the conditions described in the NCES and to those children who experienced an acute event following vaccination. Therefore, the Department concluded that it could not ''reasonably determine'' that as a general rule a causal relationship exists, and the Table is being modified accordingly. Because section 312 requires such a determination in order to sustain the presumption of causation, the Department was obligated to revise the Table consistent with the conclusions of the IOM.

The removal of the legal presumption of causation has been applied to other conditions in the ''insufficient evidence'' category (i.e., HHE and residual seizure disorder). The Department notes, however, that the removal of a condition from the Table, or the inclusion of a revised definition thereof, will not necessarily result in compensation being denied where it would have previously been awarded. Petitioners may still prevail by providing proof that the vaccine actually caused the specific injury alleged to have occurred.

Three commenters suggested that the IOM's burden of proof standard was too high. They suggested that the IOM should develop a confidence level that is more lenient than 95 percent, particularly when it is applied to the ''preponderance of the evidence'' burden of proof standards present in the VICP. After consideration of the process used by the IOM in developing its report, it is the Department's view that the IOM's standard was appropriate.

Congress mandated that the IOM review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines. The Committee was composed entirely of physicians and scientists, whose task it was to evaluate the literature on adverse events following these vaccines. Any ''burden of proof'' standard had to be consistent with the standard applied throughout the science of epidemiology, policy considerations notwithstanding. It is the Secretary's responsibility under section 312 of Pub. L. 99–660 (42 U.S.C. 300aa–1, note) to utilize the IOM's conclusions to provide a better scientific rationale for any presumptions of vaccine causation under the Program.

Moreover, although the statute requires merely a ''preponderance of the evidence'' standard in evaluating compensation claims, there is no requirement that anything other than the standard commonly used among scientific and medical professionals be applied in re-defining those conditions which will receive a presumption of causation by use of the Table. The preponderance of evidence standard is only relevant when a Master is evaluating a particular case.

One commenter suggested that the IOM conclusions were incorrect regarding DTP's pathological effects in animals or children. The commenter stated that the IOM erred in diminishing the importance of, or incorrectly judged, the conclusions of controlled epidemiologic studies. Furthermore, the commenter suggested that the IOM Committee was remiss in its examination of the evidence concerning long-term sequelae for HHE. Finally, two commenters criticized the IOM because no original research was done in putting together its conclusions. As stated above, the Department has considered these comments, but has determined that the process used by the IOM was appropriate.

The 1991 IOM Committee was made up of 11 experts in infectious disease, pediatrics, internal medicine, neurology, epidemiology, biostatistics, decision analysis, immunology and public health. During the 20 months of their work, approximately 1,400 citations were reviewed and 5 public meetings were held. No new research was conducted. Committee members considered new or controversial data and various points of view and sought to identify gaps in knowledge. The IOM cited many gaps and limitations of knowledge. Its conclusions were reached, however, after an exhaustive analysis of the best epidemiologic data available, and other information.

Congress did not mandate any specific research, but rather, an extensive review of all the available information on adverse events.

One commenter suggested the IOM incorrectly judged the conclusions of the British National Childhood Encephalopathy Study (NCES). Another commenter stated that the NCES is the only ''suitable'' study that has been done, and that it concluded that there was a causal relationship between the DTP vaccine and permanent neurologic injuries. One commenter also suggested that the NCES proved the onset of a neurologic disorder, including seizures, within 7 days of a DTP vaccination is vaccine-related. The Department has reviewed the conclusions of the NCES in light of these comments, but disagrees for the following reasons.

The 1991 IOM Report considered carefully the results of the NCES, which concluded there is an increased risk of acute neurologic illness (encephalopathy and seizures) within 7 days following DTP immunization, and that in some instances, this may lead to permanent neurologic illness. The methods and results of the NCES have been thoroughly analyzed since publication of the study, which has led to continued controversy about the study's findings and a reassessment of the role of pertussis vaccine as a cause of permanent neurologic damage. (IOM Report, page 99–107)

In its 1991 report, the IOM described potential areas of error and bias regarding the study's conclusions on acute neurologic illness and chronic neurologic damage. Regarding acute neurologic illness, the Committee cited three areas of potential study weakness: case ascertainment, determination of the onset of illness, and the lack of control for potential confounding factors. Despite these limiting factors, the IOM believed that the NCES demonstrated statistical significance for acute neurologic illness where onset is within 7 days of DTP vaccination. Their conclusion was based on the fact that only controlled epidemiological studies can address the relationship between neurologic illness and vaccine causation. Of the four controlled studies reviewed (including the NCES), only the NCES demonstrated a statistically significant risk following DTP vaccine. However, the IOM noted that the ''total number of cases reported in the other three studies was consistent with attributable risk found in the NCES,'' and on this basis concluded *the evidence was consistent* with a causal relation between DTP vaccine and acute encephalopathy. (IOM Report, page 117)

The NCES' conclusion regarding permanent neurologic damage was viewed differently by the 1991 IOM Committee. The Committee described concerns over (1) the number and composition of cases on which the estimates were based and (2) the nature of the relationship between an episode of acute neurologic illness and subsequent demonstration of neurologic or developmental abnormalities. Both concerns cast doubt upon the NCES' conclusion that DTP vaccine causes residual neurologic injury.

The conclusion regarding permanent injury was based on seven children who were found to have residual neurologic illness on follow-up. Since the NCES was published, some of these seven children have been diagnosed with non-vaccine related conditions. Thus, the risk estimates are ''very fragile'' at best, since the number of children with new unexplained neurologic illness was very small. (IOM Report, page 106).

Similarly, the NCES' conclusions on residual effects begs the central question of causation. All seven children found to have ''permanent neurologic illness'' on follow-up were presumed to be normal prior to vaccination. However, no baseline neurologic examination was performed on any of these children. Additionally, two of the seven had seizures as their manifestation of acute neurologic illness within 7 days of DTP vaccination. As the IOM noted, many experts question whether seizures alone cause neurologic illness, or rather are the ''markers'' of those children with pre-existing neurologic disease. (IOM Report, page 107).

As explained above, a follow-up study to the NCES was published by Miller, et al. in the fall of 1993. The Department asked the IOM to look at the Miller study's conclusions regarding DTP vaccine and subsequent neurological damage. The Department then asked a subcommittee of the National Vaccine Advisory Committee (NVAC) to review this later IOM report, as well as the Miller study. The NVAC Subcommittee acknowledged the original NCES (and Miller follow-up) as the most comprehensive long-term study on this subject to date, yet noted there are limitations in the data. These include the lack of neuropathologic studies on case children, the fact that young infants with pre-existing neurologic disorders (damage) can be normal on physical examination at the time of immunization, the failure to exclude alternative etiologic diagnoses, and the non-specific range of disorders classified by NCES authors under the rubric ''chronic nervous system dysfunction.'' The subcommittee noted also that the working definition of ''acute neurologic illness'' used in the NCES is not consistent with the current medical understanding of acute encephalopathy as an acute, generalized disorder of the brain. Children were placed in the NCES case definition who experienced only febrile seizures, a benign condition known to be triggered by DTP vaccine, yet never proven to have lasting effects, absent signs of acute encephalopathy. These limitations disallow definitive causal conclusions that would necessitate changes to the Secretary's definition of encephalopathy in the NPRM.

In reviewing the Miller study, the IOM Committee reached three conclusions:

(a) The evidence is insufficient to indicate whether or not DTP increases the overall risk in children of chronic nervous system dysfunction.

(b) The balance of evidence is consistent with a causal relation between DTP and the forms of chronic nervous system dysfunction described in the NCES in those children who experienced a serious acute neurologic illness within 7 days after vaccine.

(c) The evidence remains insufficient to indicate the presence or absence of a causal relation between DTP and chronic nervous system dysfunction under any other circumstances.

After extensive review and discussion, the NVAC subcommittee agreed with the IOM's conclusion that children who experience serious, acute neurological events after DTP vaccination can go on to exhibit ''chronic nervous system dysfunction.'' The NVAC subcommittee concluded that despite the conclusions of the Miller study, the information remains insufficient to accept or reject whether DTP administration prior to the acute, serious neurologic event influenced the likelihood of neurologic dysfunction. In order to avoid any confusion on this point, the Subcommittee approved the following summary statement:

> Children immunized with whole-cell DTP vaccines rarely experience acute, serious neurologic events that require hospitalization. An important question pertains to the long-term complications of these events. Among all children hospitalized with serious neurologic events, irrespective of their etiology or relationship to DTP, there is a potential for the presence of neurologic dysfunction when they are evaluated 10 years later. However, the data are insufficient to accept or reject whether DTP administration prior to the acute, serious neurologic event influenced the potential for neurologic dysfunction. *See* National Vaccine Advisory Committee (NVAC), Report of the Ad Hoc Subcommittee on Childhood Vaccines, p.7.

The Agency has reviewed carefully the IOM's conclusions and the NVAC subcommittee's evaluation of the IOM report, recognizing that questions will continue regarding DTP vaccine and chronic nervous system dysfunction. In addition, the Agency has considered comments provided by three individuals in response to the March 24, 1994 **Federal Register** Notice. These commenters suggested that the Department should retract some of the changes to the Vaccine Injury Table proposed in 1992, arguing that those changes are not inconsistent with the 1994 IOM report. The Agency has determined that despite the uncertainty regarding causation, the final rule is consistent with both the IOM report and the NVAC subcommittee's conclusions regarding the Miller study. The final rule permits an individual to receive a presumption of causation if the DTP vaccine recipient ''manifests, within the applicable period, an injury meeting the description * * * of an acute encephalopathy, and then a chronic encephalopathy persists in such person for more than six months beyond the date of vaccination.'' *See* § 100.3(b)(2). Thus, the final rule is consistent with the IOM's conclusion that some children have been shown to have experienced an acute encephalopathy following vaccine administration and then have gone on to develop chronic neurologic dysfunction. *See* 1994 IOM Report, Executive Summary.

The only circumstances under which a presumption of causation would not be available to an individual with chronic neurological dysfunction would be (1) where the child had not experienced an acute encephalopathy within several days after DTP vaccination, or (2) where the child experienced an acute encephalopathy within several days of DTP vaccination, but returned to a normal neurological state, and did not suffer 6 months of residual effects after the administration of the vaccine.

The denial of a presumption of causation for the former is consistent with the IOM's conclusions as articulated in both its 1991 and 1994 reports. The IOM did not conclude that chronic neurological dysfunction should be presumed to be caused by DTP vaccine in the absence of an acute encephalopathy that occurs within several days following vaccination. See 1994 IOM Report at page 10. The IOM stated the following:

> The evidence remains insufficient to indicate the presence or absence of a causal relation between DTP and chronic nervous system dysfunction under any other circumstances. That is, because the NCES is the only systematic study of chronic nervous system dysfunctions after DTP, the committee can only comment on the causal relation between DPT and those chronic nervous system dysfunctions under the conditions studied by the NCES. In particular, it should be noted that the chronic nervous system dysfunctions associated with DTP followed a serious acute neurologic illness that occurred in children within 7 days after receiving DPT. 1994 IOM Report at page 11.

Neither the IOM report nor the Miller study addressed the scenario where a child would experience an acute encephalopathy within several days following vaccine administration, would return to a normal neurological state, but at some point in the future would exhibit signs of chronic neurological dysfunction. The most recent report by the IOM does not present any information which warrants a modification of the presumptions in the final rule. Therefore, the final rule is consistent with the IOM's conclusions and the NVAC subcommittee's assessment of those conclusions.

The NVAC subcommittee was also asked to look at whether the evidence as described in the IOM report would support a conclusion that the time period in the vaccine injury table for acute encephalopathy following DTP vaccine should be changed from 3 to 7 days. The subcommittee concluded that there is presently insufficient information to justify such a change. The Department has reviewed the conclusions of the IOM report as well as those of the NVAC subcommittee and has determined that the rule should not be modified. In this regard, the Department recognizes that it is accepting the analysis of the NVAC subcommittee, rather than acting solely on the basis of this particular statement from the 1994 IOM report. However, it is important to note that the 1991 IOM report, which included a review of numerous scientific studies and other medical literature, did not draw any conclusions regarding the appropriate time period.

In preparing the latest report, the IOM confined its analysis to the Miller study, which was a follow-up to the original NCES. Given the limitations of the IOM's conclusions, including the lack of primary data analysis, as well as the methodologic limitations that have been noted with regard to the NCES, the NVAC subcommittee determined that the conclusions of the Miller study with respect to the appropriate timeframe could not be extended beyond the parameters of this one particular study. After careful consideration, and recognizing the extensive expertise of the NVAC subcommittee, the Department has decided to accept the conclusions of the NVAC subcommittee. Accordingly, the 3 day timeframe, as originally determined by Congress, will not be changed. Petitioners may seek to prove causation in fact for conditions arising between 3 and 7 days after vaccination and may, of course, introduce the Miller study and the IOM report as evidence bearing on such an argument.

One commenter suggested that the 1991 IOM report contradicts an earlier 1985 IOM report which gave risk estimates for reactions following whole cell pertussis vaccination, and stated that pertussis vaccine causes permanent neurologic damage.

The 1985 IOM Report focused on building a model to help evaluate the risks and benefits for existing and new vaccines to allow informed judgments on priorities for developing new vaccines. In drafting their conclusions, the 1985 group used informed judgments on vaccine risks, and the financial benefits of reducing disease. Because of the larger number of vaccines studied in the 1985 report, the review of the scientific literature on specific adverse events in this report was far less extensive than that in the 1991 report.

*Analysis of Other Data*

Before any changes should be made to the Table, four commenters suggested that the Vaccine Adverse Events Reporting System (VAERS) data and/or Vaccine Injury Compensation Program records should be examined and analyzed. VAERS is a passive reporting system which relies in large part on reports of events temporally related to vaccine administration. Therefore, no reliable conclusions about causation could be drawn from the reported VAERS data without its undergoing substantial analysis. While the Department recognizes the importance of VAERS, it is unwilling to overstate its importance by using temporal relationships to define a new Table.

Further, the IOM's section 312 study involved a thorough review of scientific and medical information contained in peer reviewed journals. However, information based on anecdotal reports (e.g., VAERS), or a series of case reports, such as claims filed under the VICP, has less certain scientific reliability, and therefore should also not be used as a basis for revising the Table. Because of the limitations of these types of evidence, the Department does not concur with this suggested approach.

The ACCV's Scientific Review Subcommittee reviews cumulative data

collected through the VAERS system at each quarterly meeting. In December 1992, the Subcommittee wrote the following concerning: ''VAERS as a means of surveillance of temporally-related adverse events, has definite limitations and does not allow the evaluation of possible causal relationships between vaccine administration and adverse events.'' VAERS's data potentially serve as a ''signal'' of possible causal relationships, which can then be investigated through what are termed Large Linked Data Bases (LLDB's). The Subcommittee encouraged increased utilization of LLDB data because of its potential for surveillance of adverse events and their possible causal relationship to vaccine administration.

The Department will monitor future analysis of VAERS and LLDB data. Should information suggest modifications to the Table, the Department will publish a new NPRM reflecting this new information with proposals for change.

One commenter suggested that the Department ignored cases in the medical literature (and VICP case files) that show a pattern of increasingly severe reactions after succeeding DTP shots in the same child. The commenter argued that the IOM Report indicated it would tend to support the hypothesis of a causal link between pertussis vaccine and permanent neurologic damage if case histories show such a pattern.

In its analysis, the IOM reviewed case reports and case series along with controlled epidemiologic studies. It is true that the IOM suggested that the increasing severity of a reaction following immunization in the same individual *might* indicate a causal link to the vaccine. The Department did not view this hypothesis as strong enough to warrant a presumption of causation. The results of the 1994 IOM Report have not changed this conclusion. However, any petitioner who can demonstrate evidence of progressive or repetitive adverse effects following vaccination may be eligible for compensation by proving causation in fact.

Three commenters suggested there should be no changes to the Table before the section 313 study (of other vaccine risks) is completed. One commenter suggested specifically that changes to the timeframe under Residual Seizure Disorder are not appropriate before results of the section 313 study have been published.

In publishing the final rule, the Department has considered the effect of the section 313 study. Section 313 of The National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660, mandated that the Secretary arrange with the IOM for an additional broad study of the risks associated with each vaccine set forth in the Table, other than the vaccines (pertussis and rubella) previously identified in the section 312 study discussed above. The IOM section 313 study, entitled ''Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality,'' was released on September 14, 1993. The study covers adverse events following these commonly-administered vaccines: measles, mumps, diphtheria, tetanus, polio, Hemophilus influenza type b, and Hepatitis B.

On March 15, 1994, a subcommittee of the NVAC met to consider the section 313 report. The subcommittee was composed of members of the NVAC and received testimony from outside experts in the fields of epidemiology, pediatric infectious disease, and pediatric neurology. The Department determined that the conclusions of the subcommittee regarding the section 313 report do not provide a basis for changing the final rule at this time. However, the Department is presently reviewing the conclusions of the NVAC subcommittee regarding the section 313 report. It is likely that after this review the Department will initiate further rulemaking proceedings. The Department has concluded, however, that there are no compelling reasons which would justify delaying the promulgation of the final rule pending completion of that review.

*Anaphylaxis*

One commenter suggested that the examples of anaphylaxis given by the IOM do not provide a basis for the proposed revisions.

The IOM examined case reports and epidemiologic studies concerning anaphylaxis and anaphylactic shock. There was considerable variability in the onset and clinical signs of what was defined as ''anaphylaxis.'' One ''suspected association'' with pertussis vaccine was a case report of twins from 1946, both of whom died within 24 hours of pertussis vaccination (IOM Report, page 146). Forensic examination confirmed tissue evidence of anaphylaxis. However, both exhibited clinical signs within 4 hours of vaccination. Other than the 1946 case reports, none of the other examples of ''anaphylaxis'' cited by the IOM, that began after 4 hours of vaccination, was associated with permanent injury. Again, Petitioners may receive compensation under the Program if they prove their injury was caused by the vaccination, even if the onset was after the 4 hours specified in the Table.

One commenter noted that the IOM Committee did not address the timeframe within which to expect anaphylaxis. The commenter suggested further that the Department should have taken into account the fact that infants react differently than children and adults.

Although it is true that infants may react differently to illness or medications, the pediatric literature is clear in stating that severe anaphylactic reactions occur immediately with antigen exposure and rarely show their first manifestation after 4 hours.

One commenter suggested that the proposed revision for DTP, MMR and Polio fail to allow for delayed hypersensitivity.

The medical literature supports the conclusion that the more severe anaphylactic reactions occur closer in time to the antigen exposure. An anaphylactic reaction that shows its first manifestation greater than 4 hours after antigen exposure is likely to be a mild reaction and thus very unlikely to lead to any permanent injury or sequelae. If a petitioner is injured by a delayed hypersensitivity reaction, compensation still can be awarded if causation in fact is proven.

One commenter suggested that the changes do not allow for hypoxia, ischemia, or hypoxia/ischemia, which are common complications of anaphylaxis and anaphylactoid shock. However, the proposed Table allows for any sequela whose first sign or clinical manifestation falls within Table guidelines, as long as the sequela is caused by the Table injury.

*Encephalopathy*

Much of the discussion of comments related to ''encephalopathy'' is set forth above under the heading ''The Department's Interpretation of the IOM Report.'' Set forth below are the remaining issues regarding encephalopathy.

One commenter suggested that the initial sentence under the definition of ''encephalopathy'' which states, ''[t]he term encephalopathy means any acute or chronic significant acquired abnormality of, or injury to, or impairment of function of the brain,'' is too vague and seems to contradict the more specific definitions which follow the proposed subparagraphs (i) and (ii).

The Department had proposed to retain the language of the original Aids to Interpretation to serve as an introduction to the definition of encephalopathy. The Department agrees that it is imprecise, and that it tends to differ from the guidance provided in the definitions for acute and chronic

encephalopathy which immediately follow. Accordingly, the proposed language in § 100.3(b)(2) has been revised to clarify the definitions for acute and chronic encephalopathy.

Comments concerning the criteria for the diagnosis of acute encephalopathy (paragraphs (b)(2)(i) (A) and (B)) were offered by three individuals. One commenter suggested that the criteria for the diagnosis in the less than 24-month-old age group were too narrow and restrictive. All three commenters felt there were clinical inconsistencies in the specific criteria. One commenter felt it was an unwarranted burden to require two out of three criteria in order to satisfy the definition of acute encephalopathy (for children 24 months of age or older). Some members of the ACCV felt that the definition of acute encephalopathy for children over 24 months implies that a seizure must last 24 hours to be within the definition. One commenter suggested the definition was unlike any other employed in medicine or science. The Department has considered carefully the concerns regarding the definition of encephalopathy and offers the following responses.

The current Qualifications and Aids to Interpretation do not reflect precisely medical knowledge of the condition ''encephalopathy.'' Many medical experts testifying in proceedings under the VICP have stated the definition is too vague and needs clarification. The term ''encephalopathy'' refers generally to a disturbance of brain function. Clinical definitions vary, as do opinions on the relationship between encephalopathy and seizures. After several pages of discussion, the IOM finally defined it as ''encephalopathy, encephalitis, or encephalomyelitis.'' Unfortunately, this definition is clinically imprecise, and in part circular. While it may serve to evaluate studies on neurologic disease, it does not impart guidance to physicians or attorneys on the specific clinical signs of a child or adult with encephalopathy.

In an effort to define encephalopathy better, the Department used the definition approved by the ACCV in 1991. The basic criteria were taken from a peer-reviewed multi-center study assessing adverse events following immunization in all age groups. (Fenichel GM., Lane DA, Livengood JR, Horwitz SJ, Menkes JH, Schwartz JF. Adverse events following immunization: Assessing probability of causation. Pediat Neurol 1989; 5:287–290) One of its authors, a pediatric neurologist and former ACCV Chairman, proposed that the Commission use the criteria as the basic framework to define encephalopathy for purposes of making changes to the Aids to Interpretation. Following its approval by the ACCV, additional clarifications were needed to define better clinical signs in the pre-verbal (less than 24-month) age group, and identify correctly infants or children who may be experiencing temporary medication effects, rather than true signs of encephalopathy. The Department appreciates that the criteria are viewed by some as overly burdensome. Any clarifications to the definition were for the sole purpose of allowing non-physicians to identify correctly infants or children with clinical signs of encephalopathy. However, the ACCV during its June 1994 meeting suggested that some modifications be made to the age criteria to reflect the fact that some children under 24 months have more advanced verbal skills. The Department agrees with this suggestion and has, therefore, changed the age marker from 24 to 18 months for purposes of distinguishing between preverbal and verbal children. § 100.3(b)(2)(i).

Additionally, the Department agrees that the term ''stupor'' is imprecise and somewhat restrictive, and has therefore decided to specify the clinical signs reflective of an acute encephalopathy and delete the terms ''stupor and coma.'' Acknowledging the difficulty of defining ''encephalopathy,'' the Department has focused on clinical criteria that clearly distinguish infants and children with brain dysfunction from those with transient ''lethargy.'' The diminished alertness and motor activity, which characterize the lethargic infant or child, are frequently observed as the physiological response to fever, infection or other acute illness. The severity and duration of the behavioral changes differentiate mere lethargy from the more serious impairment of consciousness that is the hallmark of encephalopathy (i.e., obtundation, stupor and coma). To provide the clearest guidance to petitioners' attorneys and the Court, the Department has added a new paragraph (b)(2)(i)(D) to the section to identify specific clinical signs constituting ''a significantly decreased level of consciousness.''

As to concerns articulated by members of the ACCV during the June 1–2, 1994 meeting, the Department did not intend, in listing the signs for identifying acute encephalopathy in children older than 24 months, that a ''seizure associated with loss of consciousness'' persist for 24 hours. Rather, the Department intends that in order to be experiencing an acute encephalopathy a child must experience a significantly altered mental state or decreased level of consciousness. It is the child's overall condition which must persist for 24 hours, rather than any one particular seizure.

One of the ACCV members questioned the Department's decision to use 24 hours, rather than some other period, as the appropriate time period under the definition of acute encephalopathy. The Department decided to use 24 hours because this was the marker used in the multi-center study cited above which established the criteria used by the Department in drafting the definition of encephalopathy. See Fenichel, et al. The choice of this time period is also consistent with the way in which medical professionals gauge and document clinical changes over time.

One commenter suggested there is not a clear distinction between acute and chronic encephalopathy. In response to this comment, the Department has added additional language in the final rule for clarification. For example, the Department revised the introductory language of § 100.3(b)(2) to make clear that an individual may be found to have suffered an encephalopathy only if ''such recipient manifests, within the applicable time period, an injury meeting the description below of an acute encephalopathy, and then a change in mental or neurological status persists in such person for more than 6 months beyond the date of vaccination.'' In addition, the Department added similar language to § 100.3(b)(2)(ii) to clarify the meaning of chronic encephalopathy.

Two commenters suggested that the term ''neurologically normal'' may be inappropriate because children ''who return to a normal neurological state after an acute encephalopathy,'' but later develop signs of a chronic encephalopathy, may easily be misdiagnosed as normal during this time period. Two commenters questioned whether the definition ''neurologically normal'' should be based on various testing criteria (e.g., CT or MRI scans, electroencephalogram (EEG), or lumbar puncture). The Department has considered these comments and has revised the first sentence in paragraph (b)(2)(ii) for clarification.

It is expected that any child or adult with a chronic encephalopathy as a result of a vaccine-related acute encephalopathy would show evidence of abnormalities in mental or neurological status in the days to weeks following the vaccination. In the case of an infant or child, these would be seen as a loss or slowing of developmental milestones during this time period

following the acute event. Because testing criteria and the interpretation of results may vary with age group and medical condition, no additional criteria are suggested for the diagnosis of chronic encephalopathy. The Department agrees, however, that the Aids to Interpretation should contain a clear distinction between acute and chronic encephalopathy. As explained above, additional language has been added in the final rule for clarification.

Members of the ACCV suggested the phrase ''return to a normal neurological state'' was too vague, and failed to specify the methods to be used for gauging a ''normal neurological state.'' These members also suggested that there might not be any evidence in the medical records to document this fact. The Department has considered this suggestion, but has determined that the language in the definition of chronic encephalopathy need not be changed. It is the Department's intent that if all other parts of the definition are satisfied, the presumption remains intact unless there is affirmative evidence that the child returned to a normal neurological state; such evidence could consist of documented subjective descriptions of the child's behavior and development and/or objective findings on physical examinations performed by physicians in the post-immunization period. Thus, in those cases where this issue is unclear, or not documented, the presumption would be that a child whose acute encephalopathy was followed by signs of a persistent neurologic deficit did not return to a normal neurological state.

During the June 1–2, 1994 meeting, members of the ACCV also suggested that parts of the definition of encephalopathy in the Qualifications and Aids to Interpretation as published in the NPRM were too restrictive. Specifically, they took issue with the underlined phrase of the introductory language of § 100.3(b)(2)(i)(D), which states that ''[t]he following clinical features alone, or in combination, do not qualify as evidence of an acute encephalopathy or a significant change in either mental status or level of consciousness as described above * * *.'' The Department agrees with the commenters and notes that this language did not reflect accurately the Department's intent. The point of this language as written in the NPRM was further to clarify the language as written in the NPRM was further to clarify the language in the statute, which states that certain signs and symptoms are compatible with an encephalopathy but ''in and of themselves are not conclusive evidence of encephalopathy.'' 42 U.S.C. 300aa–14(b)(3)(A). The language in the statute has been interpreted in many different ways by the Special Masters and has led to results in some cases which the Department believes are inconsistent with the medical and scientific literature on this topic. The medical evidence indicates that certain symptoms do not conclusively establish an encephalopathy, but instead are merely symptoms that are compatible with an encephalopathy. Nevertheless, in order to take account of the concerns of the ACCV, the Department has changed the underlined language above to ''do not demonstrate.''

One commenter suggested that DTP may aggravate pre-existing genetic or congenital conditions, and for that matter, other acquired conditions.

The Department is aware that, in rare instances, a vaccine may alter the clinical course of a pre-existing condition. Under section 2111(c)(1)(C) of the Act, ''significant aggravation'' of a pre-existing condition may establish eligibility for compensation provided the Petitioner is able to demonstrate that a Table injury occurred and that the prior condition was significantly aggravated during the Table timeframe, or is able to demonstrate proof of causation in fact.

In considering the comment, the Department realized that there could be confusion regarding the issue of significant aggravation of pre-existing conditions. Accordingly, the Department decided to eliminate the proposed § 100.3(b)(2)(v). Because the statute includes a definition of ''significant aggravation,'' it is unnecessary for this term to be defined in the final rule. See 42 U.S.C. 300aa–33; section 2133 of Act.

As noted above, the Department received five comments in response to the March 24, 1994, **Federal Register** notice soliciting comments regarding the 1994 IOM report. Two comments, one submitted by the American Academy of Pediatrics, and the other by a vaccine manufacturer, expressed support for the revised Vaccine Injury Table as presented in the NPRM. The commenters stated that further revisions to the proposed Vaccine Injury Table are not warranted based on the conclusions of the latest IOM review. The Academy of Pediatrics did suggest, however, that the Table should reflect the ''possibility that in some children with acute encephalopathy, chronic dysfunction may subsequently exist, but this is a rare event and the data do not allow confirmation or rejection of whether this is a direct association.''

The final rule reflects the concern articulated by the Academy. The revised Table confers a presumption of causation on those individuals who suffer an acute encephalopathy within 3 days after vaccine administration, and who then go on to exhibit 6 months of residual effects, followed by chronic neurological dysfunction.

The other three comments are discussed, where relevant, under the heading ''The Department's Interpretation of the IOM Report.''

*Hypotonic-Hyporesponsive Episode (HHE)*

One commenter supported the removal of hypotonic-hyporesponsive episode (HHE) from the original Table as proposed by stating that HHE has no long-term effects and does not lead to death; the remaining commenters were critical of the change. One commenter pointed out that HHE is a heterogeneous term, which includes features of HHE and anaphylaxis. It also includes a subset of children with ''unusual shock-like states'' who have a ''lot-dependent, bimodal, or other form of onset.'' It was suggested that the Department should give the benefit of doubt in terms of causation to this group. One commenter suggested features of collapse are life-threatening. The Department responds as follows.

Although HHE is not well understood, there are consistent, albeit rare, clinical signs reported to occur transiently following DTP immunization. The onset in young infants is usually within 12 hours following pertussis immunization. Clinical features include pallor, fever, and decreased activity and responsiveness. Although these infants may have a significantly decreased activity level and ''shock-like'' appearance, actual loss of consciousness and hypotension (shock) have not been demonstrated to occur. Disorders such as anaphylaxis should easily be distinguishable from shock-collapse or HHE because of the clearly defined physiologic changes known to occur with anaphylaxis, which do not occur in HHE. See 1991 IOM Report, 171–186; Cody CL, Baraff LJ, Cherry JD, March SM, Manclark CR. 1981. Nature and rates of adverse reactions associated with DTP and DT immunizations in infants and children. Pediatrics 68:650–660.

The 1991 IOM report found evidence ''consistent with a causal relation'' between the pertussis vaccine and HHE (shock collapse), but concluded there was insufficient evidence concerning chronic neurologic damage. Because there is no proven relationship between HHE and residual neurologic damage,

no purpose is served by retaining HHE on the Table. Removing HHE as a Table injury places the burden of proof on the petitioner that an HHE was caused by a vaccine and that it resulted in death or residual effects lasting at least 6 months.

Additional comments were received in response to the Notice published on March 24, 1994, requesting comments on the Miller study and 1994 IOM report. Two commenters argued that the conclusions of this IOM report are inconsistent with the Department's proposal to remove HHE from the Vaccine Injury Table. The commenters suggested that because the Qualifications and Aids to Interpretation include ''loss of consciousness'' as one of the symptoms of HHE, and because the NCES would have included a severe shock-collapse resulting in hospitalization as a serious, acute neurologic illness, it is appropriate for HHE to continue to receive the presumption of causation conferred by the Table.

It is important to understand that the Miller study did not purport to set forth a definition of ''encephalopathy'' for purposes of the VICP or the Vaccine Injury Table. Rather, it simply defined a set of conditions which fell under the rubric of ''acute neurologic illness'' that could be studied in relation to the administration of DTP vaccine. Loss of consciousness is not a recognized sign of HHE (see Cody et al.), notwithstanding its inclusion in the original statutory Qualifications and Aids to Interpretation. The Department recognizes that the 1991 IOM Report included among the symptoms of HHE a loss of consciousness. However, the Department believes that this simply reflected some of the case reports in the literature that were reviewed by the IOM. Given the IOM's statement that the cases reported may include other conditions, such as anaphylaxis, the Department does not view the IOM's discussion as a sufficient basis to expand its view of what properly constitutes HHE. *See* 1991 IOM Report, p. 171–177. Rather, children experiencing a loss of consciousness should properly be considered under the rubric of encephalopathy. Furthermore, there is no clear evidence that HHE (1) represents acute neurologic dysfunction, (2) requires medical intervention (although medical consultation is frequently sought), or (3) leads to any permanent sequelae or death. It is unlikely that nay of the cases described in the NCES were those of infants experiencing HHE. In light of these considerations, the Department concludes that there is an insufficient basis to retain HHE as a separate category on the Table.

*Residual Seizure Disorder*

One commenter suggested that some of the seizure classifications under Residual Seizure Disorder are out of date. They cited the example of ''grand mal'' seizures which has been dropped from the International Classification of Diseases. The commenter also questioned the use of the word ''signs'' in this section. The Department agrees with the commenter that some of the original seizure terminology has changed over time. Section 100.3(b)(4) has been revised and the word ''signs'' has been deleted from the text.

One commenter objected to proposed paragraph (b)(3)(ii) regarding the 24-hour requirement for separation of seizures under Residual Seizure Disorder. The commenter disagreed that a 24-hour separation in seizures makes the diagnosis of recurrent seizures (epilepsy) more likely, and that seizures occurring on the same day are generally regarded as part of the same event.

The Department intends that the 24-hour requirement for the separation of seizures will make it more likely that a Petitioner who qualifies under Residual Seizure Disorder has a recurring seizure disorder (epilepsy). The study cited in the NPRM, (Reference: Hauser WA. et al: Seizure recurrence after a first unprovoked seizure. NEJM 1982; 307(9):522–528), shows that seizures separated by more that 24 hours make a recurrent disorder more likely. Its importance is underscored by the fact that seizures commonly occur in clusters. For purposes of predicting recurrence of seizures, those occurring within a 24-hour period are generally viewed as a single event (with the same cause). It is likely that any petitioner who experiences a vaccine-related epileptic disorder will still qualify by having further seizures over the 12-month period specified under the statute. See section 2114(b)(2)(A) of the Act.

Recognizing the commenter's concerns, and in the interest of clarity, the Department has modified slightly the definition of a distinct seizure episode for purposes of this section. The last sentence of § 100.3(b)(3)(i) now reads, ''A distinct seizure or convulsion episode is ordinarily defined as including all seizure or convulsive activity occurring within a 24-hour period, unless competent and qualified expert neurologic testimony is presented to the contrary in a particular case.''

Two commenters did not agree with the language in paragraph (b)(4) that absence (petit mal) epilepsy is not associated with acute encephalopathy secondary to DTP immunization. Both suggested that the diagnosis be determined by requiring such a child to have an EEG with 3-per-second spike-and-wave, since it is known that children who have such minor seizures with different EEG's are often the victims of severe brain damage and should not be excluded. Finally, it was suggested that the phrase ''if properly diagnosed'' be used under these conditions. The Department's response to these comments is as follows.

There is little credible evidence to support the conclusion that absence (petit mal) epilepsy is associated with acute encephalopathy following vaccination. It is true, however, that atypical absence and other forms of spike-and-wave epilepsy may be the sequelae of an acute encephalophathy, but are not in themselves the features of such. Following acute encephalopathy, features of atypical absence seizures may develop months to years later as part of the sequelae to the acute injury. Other types of staring behavior may constitute seizure activity associated with an acute encephalopathy, such as an individual with Herpes simplex type 1 encephalitis. However, these patients typically present with other clinical signs of acute encephalopathy. (Generalized Seizures: Absence. In Dreifuss F. (ed): Pediatric Epileptology. Boston, J. Wright/PSG, 1983, p. 65–91.) It also should be noted that seizures alone do not constitute an encephalopathy. (1991 IOM Report, page 87).

Requiring EEG confirmation of 3-per-second spike-and-wave to make the diagnosis of absence (petit) epilepsy may be excessively restrictive. While patients may have these characteristic EEG findings, it is neither practical nor advisable to require that the EEG constitute the basis for diagnosis. Frequently, absence (petit mal) epilepsy is diagnosed on clinical criteria alone, (i.e., expected age group, seizure behavior, relationship to hyperventilation and/or response to ethosuximide therapy). It is therefore impractical to require EEG confirmation. Furthermore, inserting the phrase ''if properly diagnosed'' would create confusion as to whether EEG confirmation is necessary for the diagnosis of this condition.

One commenter suggested it is incorrect to state that petit mal and absence seizures are the only types of seizure activity with which staring can be associated. The Department agrees, and did not intend to imply such in the Preamble to the NPRM. Other

conditions associated with staring, such as atypical absence epilepsy, or various sequelae to central nervous system injury are noted above in the Department's response under absence (petit mal) epilepsy.

One commenter suggested that the Department has shown no evidence that pertussis-related febrile seizures have more benign outcomes than those induced by other agents. The commenter states that because the literature shows that a small percentage of children who experience febrile seizures go on to have permanent problems, the Department's findings that there is insufficient evidence are erroneous. One commenter suggested febrile seizures produce brain damage. Another commenter suggested that not every seizure which is contemporaneous with a fever is a febrile seizure. The Department agrees in part, and disagrees in part with these comments for the following reasons.

The term ''febrile seizure'' refers to seizures in infancy or childhood (between 3 months to 5 years of age) associated with fever, but without evidence of intracranial infection or other defined cause. Infants or children who have a pre-existing history of an afebrile seizure, or recurrent afebrile seizures (epilepsy) are not included in this category.

While it is true that children with a history of ''febrile seizures'' may eventually show neurologic deficits, there is no persuasive experimental or epidemiologic evidence that these deficits are a result of neurologic injury occurring at the time of the febrile seizure. Furthermore, there is no evidence that febrile seizures affect intellectual performance as judged by comparison of affected children to their siblings. (Consensus Statement. 1980. Febrile seizures: long term management of children with fever-associated seizures. Pediatrics 66:1009–1012) (Ellenberg JH, Nelson KB. Febrile seizures and later intellectual performance. Arch Neurol 1978;35:17–21)

Although the IOM concluded ''febrile seizures'' are causally related to DTP vaccine, most experts believer that febrile seizures do not cause permanent damage. The clinical courses of children experiencing febrile seizures following DTP vaccination are indistinguishable from the clinical courses of children who experience febrile seizures from other causes. (Hirtz DG, et al. Seizures following childhood immunizations. J. Pediatr. 1983;314:1085–1088)

While febrile seizures are by their very nature benign, and therefore not associated with permanent damage, not all seizures contemporaneous with fever are ''febrile seizures.'' This latter group of seizures may be the result of pre-existing neurologic disease or injury, which produces a predisposition to seizure activity with elevated temperature. Alternatively, one can have an acute encephalopathy which presents itself as fever and seizures (e.g., meningitis). In such a case, the other requisite clinical manifestations of clinical encephalopathy should be present (i.e., diminished consciousness and/or focal or generalized neurologic signs).

One commenter disagreed with the exclusion of infantile spasms. One commenter noted that the diagnosis for infantile spasms has no etiological significance. It was suggested there is no medical support to eliminate this type of seizure disorder from those potentially compensated. One commenter suggested that it is inappropriate to exclude infantile spasms, as the U.S. Court of Federal Claims has ruled that DTP causes infantile spasms. The Department has considered these comments and offers the following clarification.

The IOM concluded infantile spasms is not casually related to DTP vaccination. Therefore, there is no basis for a legal presumption of causation for this condition when it follows DTP vaccination. Petitioners have the right to prove causation in fact in instances in which infantile spasms has its onset following immunization.

The U.S. Court of Federal Claims has held that seizures diagnosed as infantile spasms can be considered a Table injury if the requisite timeframes are met. The Court has held that the respondent cannot claim that infantile spasms is a factor unrelated to vaccine administration unless the precise cause of the infantile spasms can be identified. The Court's reasoning was based on a technical interpretation of the statute, and does not purport to be an analysis of the medical issues involved. Furthermore, the Court's analysis relied, of course, on the initial Table. It cannot be viewed as relevant to the actual causation issue which is the basis for revising the Table. See Johnston v. Secretary of HHS, 22 Cl. Ct. 75 (1990).

Nevertheless, the Department has decided to remove all references to infantile spasms from the final rule. This decision was made based purely on procedural grounds. The Department concluded that this issue is more appropriately addressed in the ''factor unrelated'' section of the statute (42 U.S.C. 300aa–13(b)), rather than as part of the Vaccine Injury Table. The decision to revise the rule in this manner does not affect the Department's findings regarding infantile spasms (based on the IOM report), nor should it be viewed as inconsistent with the Department's response to the commenters' concerns. The Department continues to believe that deciding cases involving infantile spasms, the Court of Federal Claims should rely heavily on the IOM's conclusion that the evidence does not indicate a causal relationship between pertussis vaccine and infantile spasms.

One commenter claims to have concluded ''within medical certainty'' that chronic neurologic damage occurred in children who had acute afebrile seizures within the timeframes of the current Table of injuries, and as manifestations of acute encephalopathies. The commenter does not, however, provide sufficient evidence to justify a revision of the proposed language.

The IOM concluded that afebrile seizures are not causally related to DTP vaccine. They considered many studies, including one which showed that short-lived convulsions, with or without fever, have not been demonstrated to cause permanent sequelae, regardless of whether the seizures occur in association with receipt of DTP. vaccine. (IOM Report p. 118) (Hirtz DG. et al. Seizures following childhood immunizations. J. Pediatr. 1983; 102:14–18. and Ellenberg JH, Hirtz DG, Nelson KB. Do seizures in children cause intellectual deterioration? NEJM 1986; 314:1085–1088) (Ad Hoc Committee for the Child Neurology Society. Consensus Statement: Pertussis immunization and the central nervous system. Ann. of Neuro. 1991; 29 (4): 458–460).

The Department also reversed the order of § 100.3(b)(3)(i) and § 100.3(b)(3)(ii). This change was made to make the order of these two subparagraphs more logical.

In response to the March 24, 1994, **Federal Register** Notice requesting comments on the 1994 IOM Report, two commenters argued that because seizures were included in the definition of encephalopathy and chronic nervous system dysfunction used by the NCES, the Department should not remove residual seizure disorder from the Table.

The Department disagrees with the commenters on this point. As discussed above, the 1991 IOM report concluded that no causal relationship can be proven between DTP and afebrile seizures. In its 1994 report, the IOM did not retract any of its 1991 conclusions regarding DTP and seizure disorders. It merely recognized that the NCES included seizures as one of those conditions to be monitored or purposes

of tracking long-term dysfunction. This recognition does not provide any information one way or the other regarding causation.

Crucial to understanding the Department's response is the knowledge that the working definition of ''acute neurologic illness'' used in the NCES is not consistent with the current medical understanding of acute encephalopathy as an acute, generalized disorder of the brain. Children were placed in the NCES case definition who experienced only febrile seizures, a benign condition know to be triggered by DTP vaccine, yet never proven to have lasting effects absent signs of acute encephalopathy. Thus, placing seizures in the NCES case definition of encephalopathy is inconsistent with the current medical understanding of acute encephalopathy. Moreover, both the IOM and the NVAC subcommittee agreed that there is no evidence that chronic encephalopathy in the absence of acute post-immunization encephalopathy is causally related to the vaccine. Therefore, there is no basis for providing a legal presumption of vaccine causation for chronic effects based solely on the occurrence of a seizure following DTP immunization. There is simply no need for, nor is there medical evidence to support, a separate presumption for residual seizure disorder in connection with DTP vaccine.

*Sudden Infant Death Syndrome*

Two commenters suggested there is not a clear distinction between a death characterized as Sudden Infant Death Syndrome (SIDS) and one that is vaccine-related (paragraph (b)(2)(iii) of the NPRM).

The IOM concluded that SIDS is not causally related to DTP vaccine. This conclusion was based on several controlled epidemiologic studies involving hundreds of thousands of vaccinations. Although the diagnosis of SIDS is one of exclusion of other causes, there are specific guidelines as to the history preceding death, findings on forensic examination, and the ruling out of other causes by death scene examination (when possible). Moreover, the possibility that DTP-related deaths are commonly misclassified as SIDS was also considered by the IOM Committee. Since there was no evidence of an increased risk of SIDS following DTP immunization, or of any observable ''pertussis death syndrome,'' the committee considered that such effects were not supported by the medical literature. In addition, those studies that examined infant deaths other than SIDS in relation to DTP vaccine also demonstrated no excess risk in the post-immunization interval. This observation argues against the possibility that DTP-related deaths were missed as a result of their being misclassified as deaths other than SIDS. (Correspondence from Christopher P. Howson, Ph.D., Project Director, Committee to Review the Adverse Consequences of Pertussis and Rubella Vaccines to Dr. George Curlin, Deputy Director, Division of Microbiology and Infectious Diseases, National Institute of Allergy and Infectious Diseases: 9/18/91)

Nevertheless, as with infantile spasms, the Department has decided to remove all references to Sudden Infant Death Syndrome from the final rule. This decision, too, was made based purely on procedural grounds. The Department concluded (as with infantile spasms) that this issue is more appropriately addressed in the ''factor unrelated'' section of the statute (42 U.S.C. § 300aa–13(b)), rather than as part of the Vaccine Injury Table. The decision to make this change does not affect the Department's findings regarding SIDS (based on the IOM report), nor should it be viewed as inconsistent with the above analysis regarding the Department's response to the commenters' concerns. The Department continues to believe that in deciding cases involving SIDS, the Court of Federal Claims should rely heavily on the IOM's conclusion that the evidence does not indicate a causal relationship between pertussis vaccine and SIDS.

*Tuberous Sclerosis Complex*

One commenter suggested that the proposed revisions do not take into account the condition of tuberous sclerosis complex (TSC), which some believe can be aggravated by DTP vaccine. Since DTP vaccine can cause fevers which trigger seizures, there remains a question whether someone with TSC would have a worse outcome as a result of a seizure following a DTP shot. One commenter suggested that infantile spasms is frequently associated with TSC and the U.S. Court of Federal Claims has found compensable infantile spasms cases that manifested after DTP vaccine. The Department provides the following clarification regarding the effect the new Table will have on individuals with TSC.

TSC is a genetic disorder manifested chiefly as mental deficiency, epilepsy and skin lesions. Seizures occur in 80–90 percent of individuals with tuberous sclerosis. This disorder frequently presents in infancy, commonly in the form of infantile spasms. Some petitioners have argued that administration of a DTP vaccine can significantly aggravate a case of TSC.

The Act provides two avenues of proof in order to establish eligibility for compensation. A petitioner is afforded a presumption of causation if he/she can establish that an injury listed in the Table occurred within the specified time period. Otherwise, the petitioner may argue that an injury occurred which is not listed in the Table, but which was nonetheless caused by the vaccine. The TSC cases presented to the Court, some petitioners who sought to establish a Table case argued that the child experienced seizures within 3 days of receipt of a vaccine and that this event significantly aggravated the pre-existing TSC. Some petitioners who were unable to establish Table cases argued that although the child did not sustain an injury listed in the Vaccine Injury Table, the vaccine nonetheless was the cause-in-fact of the aggravation of the underlying Tuberous Sclerosis. In either case, the petitioner had the burden of proving that the clinical course of the pre-existing condition had been significantly aggravated. Typically, petitioners presented expert testimony to support this theory.

The revisions to the Vaccine Injury Table do not, by and large, change the petitioner's burden of proof in TSC cases. The only difference is that there is not a presumption of causation for residual seizure disorders for DTP vaccine. As explained in the preamble to the NPRM, and reiterated here, the IOM concluded that there is no causal relation between pertussis vaccine and afebrile seizures. However, to receive a presumption of causation, petitioners may still argue that an encephalopathy (as defined in the revised Qualifications) occurred within 3 days of vaccine administration and that this encephalopathy significantly aggravated the pre-existing Tuberous Sclerosis. In addition, petitioners may continue to argue that the vaccine was the cause-in-fact of the aggravation of the TSC. As far as infantile spasms is concerned, the Department has removed all references to this condition from the final rule as explained above. Therefore, petitioners have available to them the same avenues of proof open to individuals with other types of seizures.

One commenter noted that MMR frequently triggers epilepsy in children with TSC. The same analysis as above applies. Here, the petitioner may take advantage of the presumption of causation if he or she is able to prove either a Table encephalopathy, or a Table residual seizure disorder, and that that injury significantly aggravated the underlying TSC. If the evidence does

not demonstrate that the case meets the requirements of the Table, the case will be evaluated based on a causation theory.

*Diphtheria/Tetanus Vaccines (DT, TD, TT)*

One commenter suggested that making changes to non-pertussis components based on studies of pertussis vaccine is inappropriate.

Although the section 312 study (''IOM Report'') did not specifically study the non-pertussis antigens of DTP vaccine (i.e., diphtheria, tetanus), most individuals receiving pertussis antigen, also were given these antigens. Therefore, some inferential data is present. Moreover, studies reveal little evidence that these antigens are causally related to the injuries currently listed in the Table under DTP, other than Anaphylaxis. In the section 313 study, the IOM concluded that the evidence favored rejection of a causal relation between DT/Td/TT and encephalopathy. After review of the section 313 Report, the Department may promulgate additional changes to the Table.

*MMR Vaccines*

One commenter suggested that the requirement for at least 5 days of viral replication is inappropriate. One commenter suggested that the changes for encephalopathy are wrong because there is a broad spectrum of severity. Sequelae may occur after less serious acute encephalopathy. The proposed changes would exclude all but the most severe acute encephalopathies from the Table. The Department has considered these comments, but has concluded that the medical evidence supports the proposed changes.

Since viral replication is required for a viral vaccine-associated encephalopathy, a window for the expected time of onset is appropriate. The onset of vaccine-related illness following MMR (or any of its components) is generally from 7 to 14 days, thus a time interval of 5 to 15 days would be all-inclusive. Any acute encephalopathy of unknown cause, regardless of severity or duration, that occurs during the 5 to 15 day time frame would be eligible for the Table presumption, provided the child or adult has continued evidence of ''chronic encephalopathy.'' The 1991 NVAC Subcommittee felt there was strong support in the literature to narrow the timeframe as above. Some felt Residual Seizure Disorder should be removed from the Table based on the lack of evidence for causation in the current medical literature. This was not done because it went significantly beyond the scope of changes proposed by the PHS Task Force. However, at that time, the Subcommittee recognized additional changes may be forthcoming once the section 313 study results are published and have been reviewed. Since the Subcommittee's original discussion on this issue, the IOM issued its section 313 report. The IOM concluded for both encephalopathy and residual seizure disorder that the evidence is inadequate to accept or reject a causal relation. After review of the 313 Report, the Department may promulgate additional changes to the Table based on this conclusion.

One commenter suggested that the evidence for an association between rubella vaccine and chronic arthritis is inconclusive. The section 312 IOM Committee concluded that the evidence is ''consistent with a causal relation'' between the currently used rubella vaccine (RA 27/3) and chronic arthritis in adult women, although the evidence is limited in scope and confined to reports from one institution. To establish this biologically plausible relation more firmly, the Committee expressed the need for prospective, double-blind, controlled trials in which individuals are followed for at least 12 months after vaccination with attempts to isolate and identify rubella virus. At least one medical research center is pursuing this research to try and obtain better data on causation.

Many investigators still view the evidence as inconclusive with regard to chronic arthritis. However, the IOM's finding justifies the inclusion of chronic arthritis on the Vaccine Injury Table since there is biologic plausibility of causation, and the term ''chronic arthritis'' is defined as effects lasting greater than 6 months. In this instance, the IOM is stating there is ''consistent'' evidence for both acute onset and residual effects lasting greater than 6 months. Previously described changes for Table injuries under DTP involved conditions (i.e., HHE and Residual Seizure Disorder) that the IOM did not view as having strong evidence for *both* acute and chronic effects.

Although the Department added chronic arthritis to the Table, guidelines written into the Aids to Interpretation will preclude patients with pre-existing conditions or other non-vaccine related musculoskeletal disorders from being legally presumed to have a vaccine-related injury. As information from prospective studies becomes available, modifications may be made to the Table or Aids to Interpretation based on this data.

*Polio Vaccines*

Two commenters suggested that Inactivated Polio Vaccine (IPV), known as the Salk vaccine, may be proven to be causally related to poliomyelitis. The IOM evaluated the relationship between polio vaccines and adverse events in its section 313 study. Except for the 1955 incident with inadequate inactivation of live polio virus in the Cutter Company supply of IPV, there have been no serious adverse events causally tied to this vaccine. Since the ''Cutter Incident,'' when manufacturing and testing difficulties were identified and corrected, the safety of released inactivated Poliovirus vaccine has been assured. (See IOM Section 313 Report at 188,; *see also* Bodian, D., et al. Interim Report, Public Health Service Technical Committee on Poliomyelitis Vaccine. JAMA:1444–7, 1955) Furthermore, no serious side effects of currently available inactivated poliovirus vaccines have been documented. (Report of the Committee on Infectious Diseases, American Academy of Pediatrics 1991:389) Because these earlier problems have been cured, and there is no current evidence bearing on a causal relationship, the section 313 study does not discuss specifically the connection between IPV and poliomyelitis. Therefore, there is no evidence of a causal relationship which would justify adding poliomyelitis to the Table for IPV.

*Other Changes*

At the meeting on June 1–2, 1994, members of the ACCV suggested that the definition of ''sequela'' imposes a higher burden of proof than that required by the statute. The Department disagrees that the definition affects the burden of proof, but agrees that the definition as written should be simplified. Accordingly, the definition in § 100.3(b)(5) has been modified to read as follows: ''The term sequela means a condition or event which was actually caused by a condition listed in the Vaccine Injury Table.'' This definition is consistent with current scientific understanding that in order for a subsequent event to be considered a sequela of an initial event, there must be a causal relationship between the two.

*Technical Changes*

First, in publishing the NPRM, the Department inadvertently misquoted the statutory introduction to the Vaccine Injury Table. Accordingly, the introductory paragraph of § 100.3(a) now reads as follows: ''In accordance with section 312(b) of the National Childhood Vaccine Injury Act of 1986,

title III of Pub. L. 99–660 (42 U.S.C. 300aa-note) and section 2114(c) of the Public Health Service Act (42 U.S.C. 300aa–14(c)), the following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:''

Second, we are revising § 100.3(c), entitled ''Effective date provisions.'', to change the term ''United States Claims Court'' wherever it appears to read ''United States Court of Federal Claims'', in accordance with section 902(b) of title IX, Pub. L. 102–572, the Federal Courts Administration Act of 1992 (*See* 106 Stat. 4516).

In addition, the Department is making a technical change to the existing regulations (42 CFR part 100) by revising the currently codified acronym used to refer to the National Vaccine Injury Compensation Program from ''NVIC'' to ''VICP'' wherever it appears under part 100. ''VICP'' has been used for the entire history of the program to avoid confusion with the parents' advocacy group known as the National Vaccine Information Center (NVIC), Dissatisfied Parents Together (DPT).

Since these changes are of a technical nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures.

**Economic Impact**

The NPRM preamble erred in not explaining that this rule will not have a significant impact on a substantial number of small businesses because it will have only small effects, and those primarily on individuals. Attorneys, while small entities within the meaning of the Act, will still be awarded costs and fees for cases they bring on a reasonable basis. The reduced number of vaccine cases brought will be negligible measured against overall business opportunities for lawyers. Therefore, SBA is incorrect in saying that a regulatory flexibility analysis is required. Therefore, the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

As stated above, this final regulation modifies the Vaccine Injury Table based on legal authority, and under that authority the Court will award such fees and costs as appropriate under the law. As such, the regulation would have little direct effect on the economy or on Federal or State expenditures. For the same reasons, the Secretary has also determined that this is not a ''significant'' rule under Executive Order 12866.

**Effect of the New Rule**

The NPRM failed to explain the effect of the rule for individuals who were not eligible to file petitions based on the original Vaccine Injury Table, but who may be eligible to file petitions based on the revised Table. The Act permits such individuals to file a petition for such compensation not later than 2 years after the effective date of the revision if the injury or death occurred no more than 8 years before the effective date of the revision of the Table. See 42 U.S.C. 300aa–16(b). As part of the Omnibus Reconciliation Act of 1993, Congress amended this section to permit individuals to file claims within this 2-year period, even if they had already filed a claim involving a particular vaccine, but only if the Table revision will ''significantly increase the likelihood of obtaining compensation.'' See Pub. L. 103–66, sec. 13632(a)(1). (August 10, 1993). For example, this amendment would permit an individual whose claim alleging vaccine-related arthritis had been dismissed by the Claims Court to file a new claim for the same vaccine-related injury, if the individual can show that the addition of arthritis to the Table as a rubella vaccine-related condition has significantly increased the likelihood of obtaining compensation. The Department believes that the amendment would not permit someone who had had a claim for an alleged vaccine-related encephalopathy subsequent to DTP vaccine to refile a claim that had been dismissed by the Claims Court, as the changes in the Table related to DTP and encephalopathy do not appear to significantly increase the likelihood of obtaining compensation.

**Possible Effect on Other Legislation**

This rule will not have an effect on the Vaccines for Children Program, implemented by the Centers for Disease Control and Prevention under section 1928 of the Social Security Act, as enacted by section 13631 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993). This section provides for the establishment of a program to distribute free vaccines to all vaccine-eligible children, as defined by this section. The final rule modifies the existing Vaccine Injury Table, a mechanism by which compensation is awarded to individuals who have been found to have suffered from vaccine-related injuries. Because the two authorities are not related, the publication of this rule should not have any impact on the Vaccines for Children Program.

**Paperwork Reduction Act of 1980**

This final rule has no information collection requirements.

**List of Subjects in 42 CFR Part 100**

Biologics, Health insurance, Immunization.

Dated: November 16, 1993.

**Philip R. Lee,**

*Assistant Secretary for Health.*

Approved: November 9, 1994.

**Donna E. Shalala,**

*Secretary.*

Accordingly, 42 CFR part 100 is amended as set forth below.

## PART 100—VACCINE INJURY COMPENSATION

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

**Authority:** Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as amended (42 U.S.C. 300aa–15); § 100.3, the Vaccine Injury Table, issued under sec. 312 of Pub. L. 99–660, 100 Stat. 3779 (42 U.S.C. 300aa–1 note) and sec. 2114(c) of the PHS Act (42 U.S.C. 300aa–14(c)).

2. Section 100.1 is revised to read as follows:

### § 100.1 Applicability.

This part applies to the National Vaccine Injury Compensation Program (VICP) under subtitle 2 of title XXI of the Public Health Service (PHS) Act.

3. The first sentence in § 100.2 is revised to read as follows:

### § 100.2 Average cost of a health insurance policy.

For purposes of determining the amount of compensation under the VICP, section 2115(a)(3)(B) of the PHS Act, 42 U.S.C. 300aa.15(a)(3)(B), provides that certain individuals are entitled to receive an amount reflecting

lost earnings, less certain deductions.
* * *

4. Section 100.3 is added to read as follows:

**§ 100.3 Vaccine injury table.**

(a) In accordance with section 312(b) of the National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99–660, 100 Stat. 3779 (42 U.S.C. 300aa–1 note) and section 2114(c) of the Public Health Service Act (42 U.S.C. 300aa–14(c)), the following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

VACCINE INJURY TABLE

| Illness, disability, injury or condition covered | Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration |
|---|---|
| I. DTP; P; DT; Td; or Tetanus Toxoid; or in any combination with Polio; or any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Pertussis Bacteria, or Specific Pertussis Antigen(s): | |
| A. Anaphylaxis or anaphylactic shock | 4 hours. |
| B. Encephalopathy (or encephalitis) | 72 hours. |
| C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed. | Not applicable. |
| II. (a). Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component: | |
| A. Anaphylaxis or anaphylactic shock | 4 hours. |
| B. Encephalopathy (or encephalitis) | 5–15 days (not less than 5 days and not more than 15 days) for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component. |
| C. Residual seizure disorder in accordance with subsection (b)(3) | 5–15 days (not less than 5 days and not more than 15 days) for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component. |
| D. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed. | Not applicable. |
| II. (b). In the case of measles, mumps, rubella (MMR), measles, rubella (MR) or rubella vaccines only: | |
| A. Chronic arthritis | 42 days. |
| B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed. | Not applicable. |
| III. Polio Vaccine (other than Inactivated Polio Vaccine): | |
| A. Paralytic Polio | |
| In a non-immunodeficient recipient | 30 days. |
| In an immunodeficient recipient | 6 months. |
| In a vaccine associated community case | Not applicable. |
| B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed. | Not applicable. |
| IV. Inactivated Polio Vaccine: | |
| A. Anaphylaxis or anaphylactic shock | 4 hours. |
| B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed. | Not applicable. |

(b) *Qualifications and aids to interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in paragraph (a) of this section:

(1) *Anaphylaxis and anaphylactic shock.* For purposes of paragraph (a) of this section, Anaphylaxis and anaphylactic shock mean an acute, severe, and potentially lethal systemic allergic reaction. Most cases resolve without sequelae. Signs and symptoms begin minutes to a few hours after exposure. Death, if it occurs, usually results from airway obstruction caused by laryngeal edema or bronchospasm and may be associated with cardiovascular collapse. Other significant clinical signs and symptoms may include the following: Cyanosis, hypotension, bradycardia, tachycardia, arrhythmia, edema of the pharynx and/or trachea and/or larynx with stridor and dyspnea. Autopsy findings may include acute emphysema which results from lower respiratory tract obstruction, edema of the hypopharynx, epiglottis, larynx, or trchea and minimal findings of eosinophilia in the liver, spleen and lungs. When death occurs within minutes of exposure and without signs of respiratory distress, there may not be significant pathologic findings.

(2) *Encephalopathy.* For purposes of paragraph (a) of this section, a vaccine recipient shall be considered to have suffered an encephalopathy only if such recipient manifests, within the applicable period, an injury meeting the description below of an acute encephalopathy, and then a chronic encephalopathy persists in such person for more than 6 months beyond the date of vaccination.

(i) An acute encephalopathy is one that is sufficiently severe so as to require hospitalization.

(A) *For children less than 18 months of age* who present without an associated seizure event, an acute encephalopathy is indicated by a significantly decreased level of consciousness lasting for at least 24 hours. Those children less than 18 months of age who present following a seizure shall be viewed as having an acute encephalopathy if their significantly decreased level of consciousness persists beyond 24 hours and cannot be attributed to a postictal state (seizure) or medication.

(B) *For adults and children 18 months of age or older,* an acute encephalopathy is one that persists for at least 24 hours and characterized by at least two of the following:

*(1)* A significant change in mental status that is not medication related; specifically a confusional state, or a delirium, or a psychosis;

(*2*) A significantly decreased level of consciousness, which is independent of a seizure and cannot be attributed to the effects of medication; and

(*3*) A seizure associated with loss of consciousness.

(C) Increased intracranial pressure may be a clinical feature of acute encephalopathy in any age group.

(D) A ''significantly decreased level of consciousness'' is indicated by the presence of at least one of the following clinical signs for at least 24 hours or greater (see paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section for applicable timeframes):

(*1*) Decreased or absent response to environment (responds, if at all, only to loud voice or painful stimuli);

(*2*) Decreased or absent eye contact (does not fix gaze upon family members or other individuals); or

(*3*) Inconsistent or absent responses to external stimuli (does not recognize familiar people or things).

(E) The following clinical features alone, or in combination, do not demonstrate an acute encephalopathy or a significant change in either mental status or level of consciousness as described above: Sleepiness, irritability (fussiness), high-pitched and unusual screaming, persistent inconsolable crying, and bulging fontanelle. Seizures in themselves are not sufficient to constitute a diagnosis of encephalopathy. In the absence of other evidence of an acute encephalopathy, seizures shall not be viewed as the first symptom or manifestation of the onset of an acute encephalopathy.

(ii) *Chronic Encephalopathy* occurs when a change in mental or neurologic status, first manifested during the applicable time period, persists for a period of at least 6 months from the date of vaccination. Individuals who return to a normal neurologic state after the acute encephalopathy shall not be presumed to have suffered residual neurologic damage from that event; any subsequent chronic encephalopathy shall not be presumed to be a sequela of the acute encephalopathy. If a preponderance of the evidence indicates that a child's chronic encephalopathy is secondary to genetic, prenatal or perinatal factors, that chronic encephalopathy shall not be considered to be a condition set forth in the Table.

(iii) An encephalopathy shall not be considered to be a condition set forth in the Table if in a proceeding on a petition, it is shown by a preponderance of the evidence that the encephalopathy was caused by an infection, a toxin, a metabolic disturbance, a structural lesion, a genetic disorder or trauma (without regard to whether the cause of the infection, toxin, trauma, metabolic disturbance, structural lesion or genetic disorder is known). If at the time a decision is made on a petition filed under section 2111(b) of the Act for a vaccine-related injury or death, it is not possible to determine the cause by a preponderance of the evidence of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the Table.

(iv) In determining whether or not an encephalopathy is a condition set forth in the Table, the Court shall consider the entire medical record.

(3) *Residual Seizure Disorder.* (i) A petitioner may be considered to have suffered a residual seizure disorder for purposes of paragraph (a) of this section, if the first seizure or convulsion occurred 5–15 days (not less than 5 days and not more than 15 days) after administration of the vaccine and 2 or more additional distinct seizure or convulsion episodes occurred within 1 year after the administration of the vaccine which were unaccompanied by fever (defined as a rectal temperature equal to or greater than 101.0 degrees Fahrenheit or an oral temperature equal to or greater than 100.0 degrees Fahrenheit). A distinct seizure or convulsion episode is ordinarily defined as including all seizure or convulsive activity occurring within a 24-hour period, unless competent and qualified expert neurological testimony is presented to the contrary in a particular case.

(ii) For purposes of paragraph (a) of this section, a petitioner shall not be considered to have suffered a residual seizure disorder, if the petitioner suffered a seizure or convulsion unaccompanied by fever (defined as a rectal temperature equal to or greater than 101.0 degrees Fahrenheit or an oral temperature equal to or greater than 100.0 degrees Fahrenheit) before the fifth day after the administration of the vaccine involved.

(4) *Seizure and convulsion.* For purposes of paragraphs (b) (2) and (3) of this section, the terms, ''seizure'' and ''convulsion'' include myoclonic, generalized tonic-clonic (grand mal), and simple and complex partial seizures. Absence (petit mal) seizures shall not be considered to be a condition set forth in the Table. Jerking movements or staring episodes alone are not necessarily an indication of seizure activity.

(5) *Sequela.* The term ''sequela'' means a condition or event which was actually caused by a condition listed in the Vaccine Injury Table.

(6) *Chronic Arthritis.* (i) For purposes of paragraph (a) of this section, chronic arthritis may be found in a person with no prior history of arthropathy (joint disease) on the basis of:

(A) Medical documentation, recorded within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred within 42 days after a rubella vaccination; and

(B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination.

(ii) For purposes of paragraph (a) of this section, the following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/dermatomyositis, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as chronic arthritis for purposes of paragraph (a) of this section.

(c) *Effective date provisions.* The Table of Injuries set forth in paragraph

(a) of this section applies to petitions for compensation under the Program filed with the United States Court of Federal Claims on or after March 10, 1995. The Qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions filed with the United States Court of Federal Claims on or after March 10, 1995. The petitions for compensation filed with the United States Court of Federal Claims before March 10, 1995 shall be governed by section 2114(a) (initial ''Table'') and section 2114(b) (initial ''Qualification and Aids to Interpretation'') of the Public Health Service Act as in effect on February 8, 1995.

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