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# federal register

Monday
September 11, 1995

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### WASHINGTON, DC

**WHEN:** October 17 at 9:00 am and 1:30 pm

**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

### ATLANTA, GA

**WHEN:** September 20 at 9:00 am

**WHERE:** Centers for Disease Control and Prevention
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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 300, 550, 752, 771, 831 and 842

**RIN 3206–AG37**

### Agency Administrative Grievance System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is abolishing regulations at 5 CFR part 771 on the agency administrative grievance system (AGS). However, any AGS established under the current regulations must remain in effect until modified or replaced by the agency with another dispute resolution process. This change implements a human resources management recommendation under the National Performance Review (NPR). The change also is consistent with OPM's initiative under the NPR to sunset the Federal Personnel Manual (FPM), which included abolishing FPM Chapter 771 on the AGS as of December 31, 1993.

**EFFECTIVE DATE:** October 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Wahlert (202) 606–2920.

**SUPPLEMENTARY INFORMATION:** The National Performance Review was issued on September 7, 1993. Appendix C to the NPR is entitled Major Recommendations Affecting Governmental Systems and includes a number of recommendations concerning reinvention of human resource management. One recommendation, HRM08, stated that agencies should ''improve processes and procedures establishes to provide workplace due process for employees'' and elaborated that ''[a]ll agencies should establish alternative dispute resolution [ADR] methods and options for informal disposition of employment disputes.'' Among other things, the recommendation specifies that OPM should eliminate ''all regulations governing internal agency grievance and appeal procedures, thus freeing agencies to tailor ADR techniques to various situations.''

Proposed changes to implement this recommendation were published on December 5, 1994 at 59 FR 62353 for public comment. Comments were received from three agencies, two individuals, and two unions. The agencies were generally supportive of the change while the individuals and the unions were concerned that employees might be deprived of a benefit if agencies are not required to have a AGS. These comments are addressed below.

One agency, while supporting the opportunity to develop a grievance procedure that fits their ''needs, resources, and particular characteristics,'' commented that there is a need for ''limited'' Government-wide regulation. Here the agency recommends that OPM mandate ''universal standards'' of due process and a minimal avenue for seeking redress of grievances in the interest of equity and fairness to employees. One union comment was that OPM require the maintenance of the AGS absent establishment of some other system. One individual suggested that it is unnecessary for the current regulations to be abolished in order for agencies to experiment with ADR techniques—such experimentation could take place within the parameters of the regulations.

OPM recognizes the concern that the absence of a regulatory requirement to have an AGS could result in some agencies not having one and that this in turn could result in adverse consequences such as leaving some employees without a forum to resolve some types of workplace disputes. OPM concurs with one agency's comment that the unavailability of a forum could lead to loss of morale, increased disaffection, and diminished worker productivity. OPM, however, believes the risk of agencies not having a system is minimal. First, the absence of an agency dispute resolution system would be contrary to the intent of the NPR recommendation. Second, OPM strongly advises agencies to have an administrative review system, and this aspect of human resources management will be subject to OPM's review as part of its oversight program. Third, the negative consequences of not having a system are so clear that they should deter any agency from letting that happen. Nevertheless, as suggested by one of the commenters, OPM is retaining the single requirement that any AGS established under the current regulations must remain in effect until modified or until that AGS is replaced with another system or process for the resolution of workplace disputes. The remainder of the current regulations are abolished as proposed. OPM believes this course of action affords agencies maximum flexibility while at the same time preserving the rights of individual employees.

Here, OPM repeats and emphasizes the comment made when proposing this change—that agencies are not precluded from continuing their AGS procedures established under part 771 to resolve workplace disputes (in fact, agencies *are*required to continue these procedures at least until they are modified or replaced). Again, as noted when OPM proposed this change, agencies, as suggested by the NPR, can take the opportunity to use ADR techniques in helping resolve disputes in the workplace and to do so without the restrictions contained in the current regulations that might negatively affect agency flexibility to design and operate appropriate workplace dispute resolution procedures. OPM's Office of Labor Relations and Workforce Performance will be available upon request to assist agencies in such efforts.

One commenter stated that elimination of the regulations would serve to expand the scope of bargaining on the scope of negotiated grievance procedures. OPM disagrees—the scope of such procedures is dictated by the provisions of Chapter 71 of title 5 of the United States Code. Elimination of part 771 does not expand or in any manner modify the labor-management relations statute.

### Conforming Amendments

OPM also is deleting references to part 771 as they appear elsewhere in title 5 of the Code of Federal Regulations. In those cases, the language is modified to refer generically to ''administrative'' grievances or

grievance systems to reflect the fact that agencies may have administrative grievance systems even though they would no longer technically be established under part 771, i.e., 5 CFR §§ 300.104(c)(2), 550.803, 752.203(f), 831.204(e)(2), and 842.106(e)(2). Likewise, other current references to ''administrative'' grievances in Title 5 (and not also referring to part 771) remain unchanged, i.e., 5 CFR §§ 511.607(a)(1) and 550.804(b)(1).

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Regulatory Flexibility Act**

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

**List of Subjects**

*5 CFR Part 300*

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

*5 CFR Part 550*

Administrative practice and procedure, Claims, Government employees, Wages.

*5 CFR Part 752*

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*5 CFR Part 831*

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

*5 CFR Part 842*

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is amending title 5 of the Code of Federal Regulations as follows:

## PART 300—EMPLOYMENT (GENERAL)

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

**Authority:** 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 111478, 3 CFR 1966–1970, Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec 300.603 also issued under 5 U.S.C. 1104. Secs. 300.801 through 300.802 issued under 5 U.S.C. 1103(c).

2. In § 300.104, paragraph (c)(2) is revised to read as follows:

### § 300.104 Appeals, grievances and complaints.

* * * * *

(c) * * *

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under an agency grievance system, if applicable, or a negotiated grievance system as applicable.

## PART 550—PAY ADMINISTRATION (GENERAL)

### Subpart H—Back Pay

3. The authority citation for subpart H of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

4. In section 550.803, the definition of ''grievance'' is revised to read as follows:

### § 550.803 Definitions

* * * * *

*Grievance* has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.

* * * * *

## PART 752—ADVERSE ACTIONS

5. The authority citation for part 752 continues to read as follows:

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

6. In section 752.203, paragraph (f) is revised to read as follows:

### § 752.203 Procedures.

* * * * *

(f) *Grievances.* The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

* * * * *

## PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

7. Part 771 is revised to read as follows:

## PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Sec.
771.101 Continuation of Grievance Systems.

**Authority:** 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1945–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1969 Comp., p. 306.

### § 771.101 Continuation of Grievance Systems.

Each administrative grievance system in operation as of October 11, 1995, that has been established under former regulations under this part must remain in effect until the system is either modified by the agency or replaced with another dispute resolution process.

## PART 831—RETIREMENT

8. The authority citation for part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347: § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section

11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

9. In section 831.204, paragraph (e)(2) is revised to read as follows:

**§ 831.204 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.**

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

## PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

10. The authority citation for part 842 continues to read as follows:

**Authority:** 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, and 5 U.S.C. 8402(c)(1); Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

11. In Section 842.106, paragraph (e)(2) is revised to read as follows:

**§ 842.106 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.**

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

[FR Doc. 95–22314 Filed 9–8–95; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 270 and 274

**[Release Nos. 33–7208; IC–21332; S7–3–95]**

**RIN 3235–AG29**

## Registration Fees for Certain Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of rule amendments and form.

**SUMMARY:** The Commission is adopting amendments to rule 24f–2 under the Investment Company Act of 1940, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933. The Commission is also adopting a new form, Form 24F–2, to provide a standard form for annual notices filed under rule 24f–2. The amendments and the new form are intended to clarify the application of certain provisions of rule 24f–2 and make the rule's filing deadlines more flexible under certain circumstances.

**DATES:** The amendments are effective October 10, 1995. The rule amendments and Form 24F–2 will apply to filings that cover fiscal periods ending on or after the effective date, and to mergers and reorganizations completed on or after the effective date.

**FOR FURTHER INFORMATION CONTACT:** Karen J. Garnett, Attorney, or Joseph E. Price, Deputy Chief, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. After the effective date, questions concerning filings should be addressed to Carolyn A. Miller, Senior Financial Analyst, (202) 942–0510, Office of Financial Analysis, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''Commission'') today is adopting amendments to rules 24f–1 (17 CFR 270.24f–1) and 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act'') and a new Form 24F–2 (17 CFR 274.24).

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### Executive Summary

The Commission is amending rule 24f–2 under the 1940 Act, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act''). The amendments provide that annual notices required by rule 24f–2 will be deemed timely filed if the investment company establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date. In addition, the amendments modify certain filing periods under rule 24f–2 and clarify the operation of the rule's termination provisions in the case of investment company business combination transactions. The Commission also is adopting Form 24F–2, a standard form for annual notices required by rule 24f–2. Form 24F–2 solicits the information currently required by rule 24f–2 for annual notices and includes a work sheet for calculating filing fees. The form is intended to improve the accuracy of information contained in Rule 24f–2 Notices and improve the Commission's ability to process the notices. Finally, the Commission is adopting conforming amendments to rule 24f–1, the rule that permits certain investment companies to register securities sold in excess of the number of shares included in a registration statement.

### I. Background

Section 6(b) of the Securities Act (15 U.S.C. 77f(b)) specifies the fees that must be paid in connection with registering securities with the Commission under the Securities Act. Section 24 of the 1940 Act (15 U.S.C. 80a–24) modifies these provisions for certain investment companies

(''funds'').[1] Section 24 was intended to address the problem of inadvertent ''oversales'' of fund securities, *i.e.*, sales in excess of securities registered, which could easily occur with a fund that continually issues and redeems securities.

Rule 24f–2 under the 1940 Act permits funds to register an indefinite number of securities. A fund that makes a declaration to be governed by the rule (''Rule 24f–2 declaration'') pays an initial election fee of $500. Once a fund makes its Rule 24f–2 declaration, it must file a notice within six months after the close of each fiscal year (''Rule 24f–2 Notice'') and pay a registration fee based upon the number of shares sold during the fiscal year.[2] If the fund files its Rule 24f–2 Notice within two months after the close of its fiscal year, the fund may deduct the value of shares redeemed from the value of shares sold in calculating the amount of fees due.[3] This netting provision can result in substantial savings to funds and their shareholders.

On February 1, 1995, the Commission issued a release (''Proposing Release'') proposing for public comment amendments to rule 24f–2 that would modify the method for determining when Rule 24f–2 Notices will be deemed timely filed with the Commission.[4] The proposed amendments would also change the computation of filing deadlines and the operation of rule 24f–2's termination provisions in the case of investment company business combination transactions. In addition, the Commission proposed a standard form for filing Rule 24f–2 Notices, which was intended to improve the accuracy of information contained in the notices. The Commission received six comment letters on the Proposing Release,[5] all of which supported the proposals.[6] The Commission is adopting the amendments and form substantially as proposed.

## II. Amendments to Rule 24f–2

### *A. Delayed Filings*

Under rule 24f–2, the consequences of filing a late Rule 24f–2 Notice can be severe.[7] The Commission proposed an amendment to rule 24f–2 to provide a means for funds to ensure that their Rule 24f–2 Notices are timely filed and thus to avoid the consequences of late filings. The proposed amendment to rule 24f–2 provided that a Rule 24f–2 Notice is deemed timely filed, regardless of when it reaches the Commission, if the fund establishes that it timely transmitted the notice to a third party company or governmental entity that guaranteed delivery to the Commission no later than the filing date. All of the commenters supported the amendment, which the Commission is adopting as proposed.

As adopted, new paragraph (f) of rule 24f–2 (17 CFR 270.24f–2(f)) applies to both the deadline for using the rule's netting provision and the deadline for filing Rule 24f–2 Notices.[8] In order to rely on this provision, a fund must retain a receipt or other writing from the third party evidencing timely receipt by the third party for filing with the Commission by the due date.[9] By providing a means for funds to ensure that they are not penalized for the failure of a third party to timely file their Rule 24f–2 Notices, the amendments should eliminate the need for such funds to seek exemptive relief from the requirements of rule 24f–2.[10] Consequently, the Commission does not expect to entertain further exemptive applications from late filers.

### *B. Dividend Reinvestment Shares*

As discussed above, rule 24f–2 permits a fund to calculate the registration fee due by deducting the amount of shares redeemed during the fiscal year from the amount of shares sold during the period. In determining the amount of shares sold during the fiscal year, some funds have excluded shares issued in connection with dividend reinvestment plans (''DRIP shares'').[11] These funds, however, also may have included DRIP shares in determining the amount of shares redeemed during the fiscal year.[12] In the Proposing Release, the Commission explained that this method of counting shares is inconsistent with the netting provision of rule 24f–2, which recognizes that a substantial portion of shares being registered under rule 24f–2 were issued to replace redeemed shares that previously had been registered under the Securities Act.[13] To address this inconsistency, the Commission proposed an amendment to rule 24f–2 to require funds taking advantage of the rule's netting provision to include DRIP shares when determining the amount of shares sold and redeemed during the fiscal year.

Five of the six commenters generally supported the proposed amendment. The objecting commenter argued that including DRIP shares in the amount of securities sold during the fiscal year would contradict the Commission's long-standing position that the issuance of DRIP shares is not a ''sale'' of securities for purposes of registration.[14] This commenter asserted that the proposed amendments could require a fund to pay registration fees on DRIP shares in years that the amount of DRIP shares issued exceeds redemptions. The Commission acknowledges that in some years a fund could pay fees on DRIP shares that would not be offset by redemptions. Those circumstances would occur infrequently, however, and the fees typically would be recaptured when those shares are redeemed in later years and netted against other sales.[15]

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[1] These companies include face amount certificate companies, open-end management companies, and unit investment trusts.

[2] Rules 24f–2(a)(1), (a)(3), and (b)(1) [17 CFR 270.24f–2(a)(1), (a)(3), and (b)(1)].

[3] Rule 24f–2(c) (17 CFR 270.24f–2(c)).

[4] Investment Company Act Rel. No. 20874 (Feb. 1, 1995) (60 FR 7146 (Feb. 7, 1995)).

[5] The comment letters are available for public inspection and copying in the Commission's public reference room in File No. S7–3–95.

[6] One commenter, who supported the proposed rule amendments and form, suggested further changes to accommodate unit investment trusts (''UITs'') under certain circumstances. While such revisions are beyond the scope of the current proposal, the Commission intends to consider revisions to rule 24f–2 for UITs in the future.

[7] Rule 24f–2 currently provides that a fund cannot use the netting provision of paragraph (c) of the rule, which may result in substantially higher filing fees, if the fund's Rule 24f–2 Notice arrives at the Commission more than two months after the end of the fund's fiscal year. In addition, a fund's Rule 24f–2 declaration will terminate if the fund files its Rule 24f–2 Notice more than six months after its fiscal year end.

[8] The amendments change the deadline for filing in order to use the netting provision from two months to 60 days and the deadline for filing Rule 24f–2 Notices from six months to 180 days. *See infra* section II.D (''Calculation of Time Periods'').

[9] Funds that file Rule 24f–2 Notices by direct transmission on the Commission's EDGAR system (''electronic filers'') will not be affected by this provision, since the timeliness of their filings does not depend upon the mail or courier services. While an electronic filing may be delayed for technical reasons, the rules governing electronic filings contain adequate procedures to address transmission problems. *See* 17 CFR 232.13(b).

[10] The Commission has recently issued exemptive orders pursuant to its authority under section 6(c) of the 1940 Act (15 U.S.C. 80a–6(c)) to allow funds filing after the two month deadline under certain circumstances to use rule 24f–2's netting provision. *See* Proposing Release, *supra* note 4, at n.7 and accompanying text.

[11] DRIP shares generally are not treated as ''sales'' of stock for purposes of registration requirements under the Securities Act. *See* Securities Act Rel. No. 929 (Jul. 29, 1936). Many funds, therefore, do not include DRIP shares as ''sales'' for purposes of rule 24f–2.

[12] Funds that do not separately track DRIP shares generally have no means of determining whether shares redeemed during the fiscal year include DRIP shares.

[13] Proposing Release, *supra* note 4, at section II.B.

[14] *See supra* note 11.

[15] Furthermore, in years when the fund has no sales but issues DRIP shares, the fund would not be required to pay registration fees on shares sold, regardless of redemptions in that year. This is because the amendment does not require a fund to

The Commission considered alternatives to address the commenter's concern, including requiring funds to track the redemption of DRIP shares and exclude them from the amount redeemed in calculating net sales. Industry commenters supported the proposed approach as being less burdensome. The Commission is adopting the amendment as proposed.[16]

*C. Mergers and Other Business Combinations*

Paragraph (b)(3) of rule 24f–2 (17 CFR 270.24f–2(b)(3)) requires a fund planning to cease operations to file a post-effective amendment terminating the Rule 24f–2 declaration and file a final Rule 24f–2 Notice ''before ceasing operations.'' In the case of investment company business combination transactions, especially those involving a liquidation, merger, or sale of assets, the operation of the rule has been unclear. While in most cases a fund's operations cease upon consummation of the transaction, it may be impractical for the fund to file a final Rule 24f–2 Notice before the transaction since sales and redemptions may be occurring until the time of the transaction. In addition, paragraph (b)(3) is silent as to the applicability of the netting provision of paragraph (c) when a fund files a Rule 24f–2 Notice in connection with ceasing operations.

To address these issues, the Commission proposed amendments to rule 24f–2 to remove the requirement that a fund file its final Rule 24f–2 Notice prior to ceasing operations and, in its place, provide that if a fund ceases operations, the end of its fiscal year for purposes of rule 24f–2 is the date it ceases operations.[17] Commenters supported the proposal, and the Commission is adopting amendments to paragraph (b)(3) of rule 24f–2 as proposed.

The rule, as amended, provides that the date a fund ceases operations will be deemed the close of its fiscal year.[18] Thus, a fund must file a final Rule 24f–2 Notice within 180 days after ceasing operations and pay registration fees on all shares sold during the fiscal year.[19] If a fund files the Rule 24f–2 Notice within 60 days after ceasing operations, it will be permitted, under paragraph (c), to net redemptions made between the end of the previous fiscal year and the date of ceasing operations against sales during that period.[20] For funds involved in business combination transactions (other than reorganizations described below), revised paragraph (b)(3) specifies that a fund ceases operations for purposes of rule 24f–2 on the date that the fund's assets are distributed in a liquidation, the effective date of a merger, or, when there has been a sale of all or substantially all of the fund's assets, the date those assets are transferred.

As proposed, paragraph (b)(3) also clarified that reorganizations for the purpose of changing the fund's state of incorporation or form of organization would not result in the company ceasing operations for purposes of rule 24f–2. These transactions would be limited under the proposed rule to reorganizations that satisfied the requirements of rule 414 under Regulation C of the Securities Act.[21] Under a rule 414 reorganization, the successor fund succeeds to all assets and liabilities of the acquired fund, including the registration fee liabilities (net of any redemption credits) under rule 24f–2.[22]

Two commenters recommended that the Commission expand the application of paragraph (b)(3) of rule 24f–2 to permit the transfer of redemption credits when the assets and liabilities of an existing fund are merged or otherwise transferred into the portfolio of a newly-created series of another fund.[23] The Commission staff has previously allowed a successor fund to use an acquired fund's redemption credits when the successor fund was a newly-created series of a series company.[24] The Commission has decided to revise paragraph (b)(3) to provide that a fund may transfer redemption credits to a successor fund in the case of either a succession under rule 414 or a transfer of assets to a newly-created series of a series company.

*D. Calculation of Time Periods*

The Commission proposed amending paragraphs (b)(1) and (c) of Rule 24f–2 to replace the ''six month'' and ''two month'' time periods for filing Rule 24f–2 Notices with ''180 day'' and ''60 day'' time periods, respectively.[25] The rule's references to ''months'' has resulted in different filing periods depending upon the months involved and is inconsistent with the timing provisions in other Commission rules.[26] This has, on occasion, caused some confusion among funds about filing deadlines. Only one commenter objected to the proposed revisions, arguing that the proposal to measure time periods in days rather than months would create more confusion among filers about the deadlines for filing Rule 24f–2 Notices. The Commission believes, however, that the proposed amendments, which make rule 24f–2 consistent with other filing requirements under the 1940 Act, will reduce confusion among funds about the time periods for filing annual notices under rule 24f–2. Therefore, the Commission is adopting the amendments as proposed.[27] To further clarify how to calculate time periods, the Commission is also adopting, as proposed, a new paragraph specifying

include DRIP shares in the total amount of securities sold unless the fund is netting redemptions against sales. *See* Instruction B.7 of Form 24F–2.

[16] Paragraph (c) of rule 24f–2.

[17] Proposing Release, *supra* note 4, at section II.C.

[18] Rule 24f–2(b)(3).

[19] Rule 24f–2(b)(1).

[20] This approach is similar to that taken in rule 8f–1 under the 1940 Act (17 CFR 270.8f–1), which requires a registered investment company winding up its affairs or being merged into or consolidated with another investment company to file an application for an order declaring that the company has ceased to be a registered investment company after the transaction has occurred.

[21] 17 CFR 230.414. Rule 414 generally provides that the registration statement of a predecessor company will be deemed to be the registration statement of the successor company when the purpose of the reorganization is to change the company's domicile or form of organization, provided certain conditions are satisfied. The Commission staff has stated that rule 414 is applicable to certain fund reorganizations. *See, e.g.,* Lowry Market Timing Fund, Inc. (pub. avail. Jan. 9, 1985); Frank Russell Investment Company (pub. avail. Dec. 3, 1984).

[22] Rule 414(b) (17 CFR 230.414(b)) requires that the succession result in the successor issuer acquiring all of the assets of and assuming all of the liabilities and obligations of the issuer.

[23] This type of transaction would not satisfy the requirements of rule 414 because the successor series would be part of a separately registered series company and would not adopt the predecessor fund's registration statement as its own, as required by rule 414. As a result, the acquired fund *would* cease to do business, unlike the acquired fund in a rule 414 succession.

[24] The Victory Funds (pub. avail. Apr. 24, 1995). In The Victory Funds, the staff stated that when a shell series assumes the assets and liabilities of an acquired fund, the transaction is similar to a reorganization under rule 414 because the successor fund is continuing the acquired fund's business and each shareholder of the acquired fund, following the transaction, owns the same pro rata interest in the same portfolio of securities as the shareholder owned before the transaction.

[25] Proposing Release, *supra* note 4, at section II.D.

[26] *See, e.g.,* rule 30b1–1 under the 1940 Act (17 CFR 270.30b1–1) (requiring funds to file semi-annual reports with the Commission not more than 60 calendar days after the close of each fiscal year and fiscal second quarter); rule 30d–1 under the 1940 Act (17 CFR 270.30d–1) (requiring funds to mail semi-annual reports to stockholders within 60 days after the close of the period for which the report is made); and rule 485 under the Securities Act (17 CFR 230.485) (providing that certain post-effective amendments will become effective on the sixtieth day after filing).

[27] The Commission is adopting similar amendments to rule 24f–1, which permits funds with effective registration statements to file a notification that has the effect of registering shares sold in excess of the number of shares previously registered. The six month time periods referred to in paragraphs (a)(1) and (c) of rule 24f–1 (17 CFR 270.24f–1(a)(1), 270.24f–1(c)) are changed to 180 days.

that the first day of the time period is the first calendar day of the fiscal year following the fiscal year for which the Rule 24f–2 Notice is filed.[28]

*E. Investment Companies Funding Insurance Company Separate Accounts*

Variable insurance contracts typically are offered through two tier arrangements in which contract premiums are pooled in an unmanaged insurance company separate account and invested in an underlying investment company (''Underlying Fund''). Many of the separate accounts are registered as investment companies and organized as unit investment trusts; others are eligible for exemption from the 1940 Act.

Pursuant to an interpretive letter recently issued by the Division of Investment Management, Underlying Funds are not required to pay registration fees on securities they sell to certain separate accounts.[29] These separate accounts are those organized as unit investment trusts and registered as investment companies or separate accounts that are exempt from registration under the 1940 Act but which register their securities under the Securities Act and pay registration fees thereon. The purpose of the interpretive letter was to prevent payment of registration fees under the Securities Act for the same aggregate proceeds from investors in variable insurance products that results in ''double counting'' of assets on which such fees are paid.

The Commission is codifying this interpretive advice in two instructions to new Form 24F–2.[30] Under these instructions, an Underlying Fund that files a Rule 24f–2 Notice generally is not required to include securities sold to an unmanaged separate account that issues interests therein that are registered under the Securities Act and on which registration fees have been or will be paid.[31] If an Underlying Fund excludes such securities from the amount reported in its Rule 24f–2 Notice, the Underlying Fund is not required to pay a registration fee for those securities. An Underlying Fund relying on this exemption may not include shares redeemed or repurchased from such unmanaged separate accounts for purposes of netting sales under rule 24f–2.[32]

**III. Form 24F–2**

The Commission is adopting Form 24F–2, substantially as proposed, to provide a standard format for filing information required by Rule 24f–2.[33] All of the commenters generally supported the proposed form. The Commission believes that a standard form for Rule 24f–2 Notices will facilitate the calculation of fees due under rule 24f–2 and reduce errors in the calculation of filing fees. The standard form should also improve the Commission's ability to process Rule 24f–2 Notices and detect errors.

Instructions to the form as adopted specify that an issuer may file a single Rule 24f–2 Notice for more than one class or series of securities, provided each series has the same fiscal year end and each class or series is registered on the same Securities Act registration statement.[34] One commenter objected to limiting the use of a single Form 24F–2 to series with the same fiscal year end. This commenter suggested that series funds with different fiscal year ends be permitted to file a single Form 24F–2 for a specified 12-month period, which would permit series with different fiscal year ends to net sales of all series against redemptions of all series. The Commission believes, however, that the limitation is appropriate. Series having different year ends appear to operate more like separate funds than a single fund and thus should not be treated as a single fund for purposes of aggregating sales and redemptions. The Commission has therefore decided not to expand the circumstances under which a series fund is permitted to file a single Form 24F–2 for series within the fund.[35]

As adopted, Form 24F–2 consists of twelve items and detailed instructions for completing and filing the form. The first four items require basic identifying information: the name and address of the fund; the class of shares or series to which the filing relates; the Securities Act file number of the registration statement on which the shares are registered; and the last day of the fiscal-year for which the Rule 24f–2 Notice is filed.

Items 5 and 6 must be completed only if the fund fails to file its Rule 24f–2 Notice within 180 days after its fiscal year end. In such a case, the fund's declaration to register an indefinite number of shares is terminated on the next business day.[36] As under the current rule, the fund must file a separate Form 24F–2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Item 5 requires the fund to indicate whether the form is being filed for purposes of reporting securities sold after the close of the fiscal year but before termination of the fund's Rule 24f–2 declaration. In either case, the fund must report the date of termination of its Rule 24f–2 declaration in Item 6.

Items 7 through 11 require a fund to identify the shares sold during the fiscal year for which registration fees have previously been paid or which must be accounted for in determining the fee payable with the Rule 24f–2 Notice.[37] This information is substantially the same as that currently required for a Rule 24f–2 Notice. The only significant change is that the form reflects amendments to paragraph (c) of rule 24f–2 that require a fund to include all securities issued pursuant to DRIPs in the fund's aggregate sales for purposes of calculating registration fees under the rule's netting provisions.[38]

Item 12 is a work sheet for calculating the fee payable with the notice. The fee calculation is presented in tabular

[28] Rule 24f–2(e) (17 CFR 270.24f–2(e)).

[29] American Council of Life Insurance (pub. avail. June 20, 1995).

[30] Instructions B.5 and C.4 to Form 24F–2.

[31] American Council of Life Insurance (pub. avail. June 20, 1995). The letter and the new instructions do not apply to shares sold to separate accounts whose interests are not registered under the Securities Act or to pension plans.

[32] The Commission may, in the future, consider a separate form designed specifically for variable insurance products to report shares sold under rule 24f–2.

[33] Paragraph (b)(1) of the rule currently specifies the information that must appear in a Rule 24f–2 Notice. Because Form 24F–2 solicits the same information, the amendments delete this information from the rule.

[34] Instruction A.3. This instruction does not affect the method of allocating expenses among multiple classes of funds in accordance with existing orders or rule 18f–3 under the 1940 Act. A multiple class fund is permitted to net credits for redemptions of shares of one class against sales of shares of another class if the fund's exemptive order or plan under rule 18f–3 treats federal securities registration fees as a fund expense and does not provide for the allocation of those fees on a class-by-class basis. *See* Investment Company Act Rel. No. 20915 (Feb. 23, 1995) (60 FR 11876 (Mar. 2, 1995)) (adopting rule 18f–3).

[35] This limitation on filing a single Rule 24f–2 Notice for more than one series is not intended to suggest that all series of a series company must have the same fiscal year end.

[36] Rule 24f–2(b)(2) (17 CFR 270.24f–2(b)(2)).

[37] As proposed, Item 7 required funds to report the number and aggregate sale price of securities of the same class or series ''sold during the fiscal year'' which had been registered under the Securities Act other than pursuant to rule 24f–2 in a prior fiscal year, but which remained unsold at the beginning of the fiscal year. One commenter asserted that it would be more meaningful, for purposes of calculating filing fees due under rule 24f–2, not to limit this item to securities sold during the fiscal year. The Commission agrees and has omitted the limiting phrase from the form as adopted.

[38] Instruction B.7 clarifies that this item should be completed only if the fund is using the netting provision of rule 24f–2(c) to calculate its registration fee. *See supra* section II.B (''Dividend Reinvestment Shares'').

format to facilitate the Commission staff's review of filing fees for purposes of determining whether a fund has paid the appropriate amount. The work sheet contains seven line items:

(i) The aggregate sale price of securities sold during the fiscal year in reliance on rule 24f–2;[39]

(ii) The aggregate price of DRIP shares (if not included in (i));

(iii) The aggregate price of shares redeemed or repurchased during the fiscal year;

(iv) The aggregate price of shares redeemed or repurchased and previously applied as a reduction to filing fees pursuant to rule 24e–2;[40]

(v) The net aggregate sale price of securities sold during the fiscal year in reliance on rule 24f–2 (line (i), plus line (ii), less line (iii), plus line (iv));

(vi) The multiplier to be used to determine the fee;[41] and

(vii) The fee due (line (i) (if the netting provision is not used) or line (v) (if the netting provision is used) multiplied by line (vi)).[42]

A fund must complete lines (ii), (iii), (iv), and (v) only if it is using the rule's netting provision.

The work sheet provided in Item 12 is similar to the method for reporting the calculation of Rule 24f–2 fees on the EDGAR system. Under the EDGAR system, an electronic filer is required to prepare a header for each Rule 24f–2 Notice. The header contains certain filing fee information that is included in the accompanying Rule 24f–2 Notice. As adopted, Form 24F–2 does not alter the headers for EDGAR filings.[43]

## IV. Cost/Benefit Analysis

The rule amendments and new form adopted today are intended to clarify the operation of rule 24f–2 and make the rule's filing deadlines more flexible under certain circumstances. The addition of paragraph (f) to rule 24f–2 provides a means for funds to avoid late filings, which can result in significant costs to the funds. This provision will relieve funds of the cost of preparing applications for exemption from the provisions of the rule and will relieve the Commission of the cost of reviewing such applications. Other revisions to rule 24f–2 adopted today are intended to clarify the operation of the rule when an extraordinary business transaction occurs such as a merger or liquidation. The change to use of days rather than months to measure the filing deadlines under rules 24f–1 and 24f–2 will, in most cases, shorten the period to make required filings by a day or two, and thus could be viewed as a ''cost.'' The Commission believes, however, that this ''cost'' will be minor and is outweighed by the added certainty and uniformity that such a change brings to the operation of the rule. Form 24F–2 is designed to ensure that funds provide consistent information in their Rule 24f–2 Notices and to facilitate the staff's review of annual notices. The Commission believes that the standard form and the interpretive guidance provided in the form's instructions will reduce the burden of preparing and reviewing Rule 24f–2 Notices.

## V. Summary of Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Act Analysis, prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Karen J. Garnett, Office of Disclosure and Investment Adviser Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

## Text of Rule Amendments

### List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. The authority citations following §§ 270.24f–1 and 270.24f–2 are removed.

### § 270.24e–2 [Amended]

3. By amending § 270.24e–2, paragraph (a)(1), by revising the reference ''Rule 457(c) (17 CFR 230.457(c))'' to read ''Rule 457(d) (17 CFR 230.457(d))''.

### § 270.24f–1 [Amended]

4. By amending § 270.24f–1, paragraphs (a) and (c)(1), by revising the phrase ''6 months'' to read ''180 days''.

5. By amending § 270.24f–2 by revising paragraphs (b)(1), (b)(3), and (c) and by adding paragraphs (e) and (f) to read as follows:

### § 270.24f–2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(b)(1) If an issuer has filed a registration statement or post-effective amendment with a declaration authorized by paragraph (a)(1) of this section, it shall, with respect to such registration statement and within 180 days after the close of any fiscal year during which such declaration was in effect, file five copies of a notice (''Rule 24f–2 Notice'') with the Commission. The Rule 24f–2 Notice shall be filed on Form 24F–2 (17 CFR 274.24) and shall be prepared in accordance with the requirements of the form. The Rule 24f–2 Notice shall be accompanied by an opinion of counsel indicating whether the securities the registration of which the notice makes definite in number were legally issued, fully paid, and non-assessable, and the additional filing fee,

[39] In the case of a fund with a front-end load, the aggregate sale price includes the sales load.

[40] Section 24(e)(1) of the 1940 Act (15 U.S.C. 80a–24(e)(1)) permits a fund to file a post-effective amendment to its Securities Act registration statement to increase the number of securities registered. Rule 24e–2 (17 CFR 270.24e–2) provides that the fee to be paid at the time of filing such post-effective amendment will be based on the maximum aggregate offering price at which the additional securities will be offered. This filing fee may be reduced by the amount of securities redeemed or repurchased by the issuer in its previous fiscal year, provided the issuer did not use those redemptions or repurchases under the netting provisions of rule 24f–2. Conversely, the issuer may not count redemptions and repurchases used to reduce the filing fee under rule 24e–2 for purposes of netting under rule 24f–2.

[41] In the Act making appropriations for the Commission for fiscal 1994, Congress increased the rate of fees prescribed by section 6(b) of the Securities Act from one fiftieth of one percent to one twenty-ninth of one percent. Pub. L. 103–121 (Oct. 27, 1993). Congress extended the increased fee for fiscal year 1995. Pub. L. 103–352 (Oct. 13, 1994). The current fee rate will be in effect through September 30, 1995, unless further extended by Congress; otherwise, the rate will revert to one fiftieth of one percent. Instruction C.6 to the form reminds funds to determine the current fee rate before filing.

[42] Instruction C.2 specifies that the $100 minimum fee prescribed by section 6(b) of the Securities Act does not apply to fees payable under rule 24f–2. This provision also has been incorporated into paragraph (c) of the rule.

[43] The Proposing Release requested comment whether the Commission should modify its systems to permit computer verification of the fee calculation based on information in the form rather than the header, thus avoiding the need for filers to duplicate information. The only commenter to address this question supported such a modification because it would relieve EDGAR filers of the burden of manually transferring information from Form 24F–2 to the header. The Commission agrees that such a modification could simplify electronic submissions of Form 24F–2. As the staff further develops the EDGAR system, the Commission may propose appropriate modifications relating to Form 24F–2.

if any, specified in paragraph (c) of this section.

* * * * *

(3) For purposes of this section, if a registrant ceases operations, the date the registrant ceases operations shall be deemed to be the close of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets of the registrant, the registrant shall be deemed to have ceased operations for purposes of this section on the date all or substantially all of the registrant's assets are distributed, the date the merger becomes effective under state law, or the date the assets are transferred; *provided, however,* that in the case of a merger of a registrant (''Predecessor Fund'') with another registrant (''Successor Fund''), or a sale of all or substantially all of a Predecessor Fund's assets and liabilities to a Successor Fund, the Predecessor Fund shall not be deemed to have ceased operations and the Successor Fund shall assume the obligations, fees, and redemption credits of the Predecessor Fund incurred pursuant to this section and § 270.24e–2 if:

(i) The registration statement of the Predecessor Fund is deemed the registration statement of the Successor Fund in a transaction described by § 230.414 of this chapter; or

(ii) The Successor Fund is a series of a series company (as defined in § 270.18f–2), and immediately prior to the transaction the Successor Fund had no assets or liabilities, other than nominal assets or liabilities, and no operating history.

(c) A Rule 24f–2 Notice shall be accompanied by the payment of a filing fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to this section and shall be based upon the actual aggregate sale price for which such securities were sold. The filing fee shall be calculated in the manner specified in section 6(b) of the Securities Act of 1933 and the rules and regulations thereunder, except that the minimum filing fee required under section 6(b) shall not apply to fees due under this section. When the Rule 24f–2 Notice is filed not later than 60 days after the close of the fiscal year during which such securities were sold pursuant to this section, the filing fee to be paid as to such securities shall be the fee, if any, calculated in the manner specified in Section 6(b) of the Securities Act of 1933 except that, for the purpose of such calculation, such fee shall be based upon the actual aggregate sale price for which securities (including, for this purpose, all securities issued pursuant to a dividend reinvestment plan) were sold during the issuer's previous fiscal year, reduced by the difference between:

(1) The actual aggregate redemption or repurchase price of such securities of the issuer redeemed or repurchased by the issuer during such previous fiscal year; and

(2) The actual aggregate redemption or repurchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to § 270.24e–2(a) in filings made pursuant to section 24(e)(1) of the Investment Company Act of 1940.

* * * * *

(e) To determine the date on which a Rule 24f–2 Notice must be filed with the Commission under paragraph (b)(1) of this section or the date that a Rule 24f–2 Notice must be filed in order to permit the issuer to calculate the fee due in accordance with the second sentence of paragraph (c) of this section, the first day of the 180 day or 60 day period, as the case may be, shall be the first calendar day of the fiscal year following the fiscal year for which the Rule 24f–2 Notice is to be filed.

**Note to Paragraph (e):** For example, a Rule 24f–2 Notice for a fiscal year ending on June 30 must be filed no later than December 28 or, if the issuer calculates the fee due in accordance with the second sentence of paragraph (c), no later than August 29. If the last day of the period falls on a non-business day (a Saturday, Sunday or federal holiday), the period shall end on the first business day thereafter, as provided by § 270.0–2.

(f) The date of filing of a Rule 24f–2 Notice with the Commission shall be the date on which the Rule 24f–2 Notice is actually received by the Commission; *provided, however,* that other than in the case of a Rule 24f–2 Notice filed by direct transmission (as such term is defined in rule 11 of Regulation S–T (17 CFR 232.11) a Rule 24f–2 Notice received by the Commission after the date due under either paragraph (b)(1) or paragraph (c) of this section shall be deemed to have been timely filed if the issuer establishes that the Rule 24f–2 Notice was transmitted timely to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the Notice to the Commission no later than the required filing date.

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for Part 274 continues to read as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.,* unless otherwise noted.

7. Section 274.24 and Form 24F–2 are added to read as follows:

**Note:** The text of Form 24F–2 does not appear in the Code of Federal Regulations. A copy of Form 24F–2 is attached as Appendix I to this document.

### § 274.24 Form 24F–2, annual notice of securities sold pursuant to registration of an indefinite number of certain investment company securities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, and unit investment trusts pursuant to § 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

Dated: September 1, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

BILLING CODE 8010–01–P

**APPENDIX I.**

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

## FORM 24F-2
## Annual Notice of Securities Sold Pursuant to Rule 24f-2

*Read instructions at end of Form before preparing Form.*
*Please print or type.*

| | |
|---|---|
| 1. | Name and address of issuer: |
| 2. | Name of each series or class of funds for which this notice is filed: |
| 3. | Investment Company Act File Number:<br><br>Securities Act File Number: |
| 4. | Last day of fiscal year for which this notice is filed: |
| 5. | Check box if this notice is being filed more than 180 days after the close of the issuer's fiscal year for purposes of reporting securities sold after the close of the fiscal year but before termination of the issuer's 24f-2 declaration:<br><br>[ ] |
| 6. | Date of termination of issuer's declaration under rule 24f-2(a)(1), if applicable (see Instruction A.6): |
| 7. | Number and amount of securities of the same class or series which had been registered under the Securities Act of 1933 other than pursuant to rule 24f-2 in a prior fiscal year, but which remained unsold at the beginning of the fiscal year: |
| 8. | Number and amount of securities registered during the fiscal year other than pursuant to rule 24f-2: |
| 9. | Number and aggregate sale price of securities sold during the fiscal year: |

10. Number and aggregate sale price of securities sold during the fiscal year in reliance upon registration pursuant to rule 24f-2:

11. Number and aggregate sale price of securities issued during the fiscal year in connection with dividend reinvestment plans, if applicable (see Instruction B.7):

12. Calculation of registration fee:

| | |
|---|---|
| (i) Aggregate sale price of securities sold during the fiscal year in reliance on rule 24f-2 (from Item 10): | $ _____ |
| (ii) Aggregate price of shares issued in connection with dividend reinvestment plans (from Item 11, if applicable): | + _____ |
| (iii) Aggregate price of shares redeemed or repurchased during the fiscal year (if applicable): | - _____ |
| (iv) Aggregate price of shares redeemed or repurchased and previously applied as a reduction to filing fees pursuant to rule 24e-2 (if applicable): | + _____ |
| (v) Net aggregate price of securities sold and issued during the fiscal year in reliance on rule 24f-2 [line (i), plus line (ii), less line (iii), plus line (iv)] (if applicable): | _____ |
| (vi) Multiplier prescribed by Section 6(b) of the Securities Act of 1933 or other applicable law or regulation (see Instruction C.6): | x _____ |
| (vii) Fee due [line (i) or line (v) multiplied by line (vi)]: | _____ |

***Instruction:*** *Issuers should complete lines (ii), (iii), (iv), and (v) only if the form is being filed within 60 days after the close of the issuer's fiscal year.* See Instruction C.3.

13. Check box if fees are being remitted to the Commission's lockbox depository as described in section 3a of the Commission's Rules of Informal and Other Procedures (17 CFR 202.3a).

[ ]

Date of mailing or wire transfer of filing fees to the Commission's lockbox depository:

**SIGNATURES**

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)* _____

_____

Date _____

* Please print the name and title of the signing officer below the signature.

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

# FORM 24F-2

## Annual Notice of Securities Sold Pursuant to Rule 24f-2

INSTRUCTIONS

### A. Rule as to Use of Form 24F-2

1. This form shall be used for annual notices required by rule 24f-2 under the Investment Company Act of 1940 ("Act") [17 CFR 270.24f-2]. Annual notices on this form shall be filed within 180 days after the close of any fiscal year during which the issuer has in effect a declaration to register an indefinite number of securities pursuant to rule 24f-2(a)(1) of the Act. If the notice is being filed not later than 60 days after the close of the issuer's fiscal year, the fees due with the notice may be reduced. (*See* Instruction C.3.)

2. If the form contains insufficient space for the information required in any item, issuers should attach additional pages as necessary and indicate in the space provided for the item the number of additional pages attached.

3. The issuer named in Item 1 of this form is the face amount certificate company, open-end management company, or unit investment trust that has filed a registration statement under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] containing a declaration to register an indefinite number of securities under rule 24f-2(a)(1) of the Act. If the issuer has registered more than one class or series on the same Securities Act registration statement, the issuer may file a single Form 24F-2 for those classes or series, provided each series has the same fiscal year end. Issuers electing to calculate filing fees on a class-by-class or series-by-series basis, however, should file a separate Form 24F-2 for each class or series. All classes and series for which the form is filed should be identified in Item 2.

4. The Investment Company Act file number reported in response to Item 3 should be the number of the issuer's registration statement filed under the Act. The Securities Act file number in Item 3 refers to the registration statement filed to register an indefinite number of securities (beginning with either "2-" or "33-").

5. Item 4 requires issuers to report the date of the last day of the fiscal year for which the notice is filed. In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of rule 24f-2.

6. Items 5 and 6 should be completed only if the issuer fails to file its Rule 24f-2 Notice within 180 days after the close of the issuer's fiscal year. In such cases, the issuer's declaration to register an indefinite number of shares will be terminated on the next business day, and the issuer should report the date of termination in Item 6. All such issuers must file a separate Form 24F-2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Issuers should check the box in Item 5 only if they are filing the form to report securities sold during the period after the close of the fiscal year but before the declaration was terminated.

### B. Computation of Number of Securities

1. In response to Items 7 through 11, issuers may aggregate sales, redemptions, and amounts issued of all classes or series for which the notice is being filed. Issuers must aggregate prices within each class or series. If the issuer charges a front-end sales load on its securities, the aggregate sale price must include the sales load.

2. Item 7 requires the issuer to report the number and amount of securities of the same class or series as those for which the notice is being filed, if any, which were registered under the Securities Act *other than* pursuant to rule 24f-2. This item includes securities registered by post-effective

amendment pursuant to rule 24e-2. Securities reported in Item 7 must have been registered prior to the fiscal year for which the notice is being filed and must remain unsold at the beginning of the fiscal year.

3. Item 8 refers to securities registered during the fiscal year *other than* pursuant to rule 24f-2. This item includes securities registered during the fiscal year by post-effective amendment pursuant to rule 24e-2.

4. Item 9 requires the issuer to report the total number and sale price of securities sold during the fiscal year. This item includes (i) sales of securities registered prior to the fiscal year, (ii) sales of securities registered during the fiscal year, and (iii) securities sold in reliance on registration under rule 24f-2. The issuer may also include shares issued in connection with dividend reinvestment plans ("DRIP shares"), unless the issuer separately reports DRIP shares in Item 11.

5. Securities sold to an unmanaged separate account that offers interests therein that are registered under the Securities Act and on which a registration fee has been or will be paid, may be excluded from the securities reported in Item 9. (*See* Investment Company Act Rel. No 21332 (Sep. 1, 1995).)

6. Item 10 requires the issuer to report the securities sold during the fiscal year in reliance upon registration under rule 24f-2.

7. Item 11 should be completed only if the issuer is using the netting provision of Item 12. In such cases, the issuer should report the number and dollar amount of securities not registered under the Securities Act that were issued during the fiscal year in connection with dividend reinvestment plans. The issuer is not required to complete Item 11 if DRIP shares are included in the securities reported in Item 9.

**C. Computation of Registration Fees**

1. Item 12 is a work sheet for calculating the filing fee due. Items 12 (i) and (ii) should be the same as the responses provided to Items 10 and 11, respectively.

2. The filing fee due shall be calculated in the manner specified in Section 6(b) of the Securities Act [15 U.S.C. 77f(b)]. Except as provided below, fees shall be based on the actual aggregate sale price, redemption price, or dollar amount at the date on which the securities were sold, redeemed, or issued. The $100 minimum fee prescribed by Section 6(b) does not apply to fees payable under rule 24f-2.

3. Lines (ii), (iii), (iv), and (v) of Item 12 (netting provision) apply only to issuers that file the form not later than 60 days after the close of the fiscal year during which securities were sold. In such cases, the filing fee shall be based upon the net aggregate price for which such securities were sold or issued during the issuer's previous fiscal year. Net aggregate price is the actual aggregate sale price, plus the value of shares issued in connection with dividend reinvestment plans, reduced by the difference between (1) the actual aggregate redemption or repurchase price of such securities of the issuer redeemed or repurchased by the issuer during the fiscal year, and (2) the actual aggregate redemption or purchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to rule 24e-2(a) under the Act.

4. If the issuer excludes from the shares reported in Item 9 securities sold to unmanaged separate accounts pursuant to Instruction B.5, the issuer may not use shares redeemed or repurchased from those unmanaged separate accounts for purposes of determining the number of shares redeemed in Item 12.

5. If the issuer's total redemptions and repurchases during the fiscal year exceed the issuer's sales and amount of DRIP shares issued during the fiscal year, the issuer may report on line (iii) of Item 12 only the amount of redemptions equal to the amount of shares sold and issued during the fiscal year, as reported on lines (i) and (ii). The net aggregate price reported in line (v) of Item 12 cannot be less than zero.

6. The multiplier for calculation of the filing fee required by line (vi) of Item 12 is prescribed by Section 6(b) of the Securities Act. As of October 13, 1994, the multiplier was one twenty-ninth of one percent of the maximum aggregate offering price of the securities being registered. This multiplier is subject to change from time to time, without notice, by act of Congress through

appropriations for the Commission or other laws. Issuers should determine the current fee rate prior to the time of filing by reference to Section 6(b) and any law or regulation affecting Section 6(b). Unless otherwise specified by act of Congress, the fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changed during the year.

7. The Commission currently calculates fees due under Section 6(b) by dividing the total amount of shares to be registered by 2900. Thus, the multiplier used in line (vi) of Item 12, under current law, should be 1/2900. Use of a decimal factor or some other method to calculate filing fees may result in payment of an incorrect amount. The Commission will not accept any filing that is accompanied by insufficient fees, and no part of the filing fee is refundable. Fees must be paid by United States postal money order, certified bank check, or cash. Issuers should refer to rule 0-8 under the Act [17 CFR 270.0-8] and rule 3a under the Commission's Rules of Informal and Other Procedures [17 CFR 202.3a] for instructions on payment of fees to the Commission. Electronic filers are subject to the fee payment requirements of rule 13(c) under Regulation S-T [17 CFR 232.13(c)].

**D. Signature and Filing Form; Exhibit**

1. The form shall be signed on behalf of the issuer by an authorized officer of the issuer. The issuer shall file five copies of the completed form, at least one of which has been manually signed, with the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. In accordance with general rule 8b-11 under the Act [17 CFR 270.8b-11], duplicated or facsimile versions of manual signatures shall be considered manual signatures for the purposes of filings under the Act and the rules and regulations thereunder. Electronic filers are subject to rule 302 of Regulation S-T [17 CFR 232.302] regarding signatures on forms filed electronically.

2. This form must be accompanied by the appropriate filing fee and an opinion of counsel indicating whether the securities were legally issued, fully paid, and non-assessable. (*See* paragraph (b)(1) of rule 24f-2.) A copy of the opinion of counsel should be attached to each copy of the form filed with the Commission.

3. This form will be deemed filed with the Commission on the date on which it is actually received by the Commission. Except in the case of a Rule 24f-2 Notice filed by means of "direct transmission" (as such term is defined in rule 11 of Regulation S-T [17 CFR 232.11], this form shall be deemed to have been timely filed if the issuer establishes that it timely transmitted the form and required fees to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the form to the Commission no later than the required filing date. Issuers relying on such third party delivery must retain a receipt or other writing from the third party evidencing timely receipt by the third party for filing with the Commission by the due date. The Commission will not accept for filing any form accompanied by insufficient payment for the filing fee. Forms accompanied by insufficient payment shall be returned to the issuer for proper payment and shall not be deemed filed until receipt by the Commission of proper payment.

[FR Doc. 95–22445 Filed 9–8–95; 8:45 am]
BILLING CODE 8010–01–C

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 510, 520, and 558**

## New Animal Drugs; Change of Sponsor

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Premiere Agri Technologies, Inc., to ADM Animal Health & Nutrition Div., and a change of sponsor of several new animal drug applications (NADA's) from wholly-owned subsidiaries to ADM Animal Health & Nutrition Div.

**EFFECTIVE DATE:** September 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

**SUPPLEMENTARY INFORMATION:** ADM Animal Health & Nutrition Div., P.O. Box 2508, Fort Wayne, IN 46801–2508, has informed FDA of a change of sponsor name in approved NADA 91–582 (Tylosin) from Premiere Agri Technologies, Inc. ADM Animal Health & Nutrition Div., has also informed FDA that it has assumed sponsorship of the following NADA's previously owned by its subsidiaries:

| NADA No. | Drug name | Former sponsor name and address |
|---|---|---|
| 48–480a | Chlortetracycline | Feed Specialties Co., Inc., 1877 NE. 58th Ave., Des Moines, IA 50313. |
| 65–256 | Chlortetracycline hydrochloride | Do. |
| 107–957 | Tylosin and sulfamethazine | Do. |
| 108–484 | Tylosin and sulfamethazine | Do. |
| 110–045 | Tylosin | Good-Life, Division of Central Soya Co., Inc., Good-Life Dr., P.O. Box 687, Effingham, IL 62401. |
| 110–439 | Hygromycin B | Feed Specialties Co., Inc. |
| 118–877 | Pyrantel tartrate | Do. |
| 128–411 | Tylosin and sulfamethazine | Good-Life, Division of Central Soya Co., Inc. |
| 131–956 | Tylosin and sulfamethazine | MAC–PAGE, Inc., 1600 South Wilson Ave., Dunn, NC 28334. |
| 132–448 | Bambermycins | Feed Specialties Co., Inc. |
| 133–490 | Pyrantel tartrate | MAC–PAGE, Inc. |
| 140–842 | Hygromycin B | Do. |

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Feed Specialties, Co., Inc., Good-Life, Division of Central Soya Co., and MAC–PAGE, Inc., because the firms are no longer the sponsors of any approved NADA's. The agency is also amending the drug labeler codes in 21 CFR 520.445b, 558.95, 558.274, 558.485, 558.625, and 558.630 providing for use of the above mentioned veterinary drug products. The sponsor labeler code of Premiere Agri Technologies, Inc., is being retained for the new sponsor.

### List of Subjects

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

### § 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Premiere Agri Technologies, Inc.,'' and by alphabetically adding a new entry for ''ADM Animal Health & Nutrition Div., by removing the entries for ''Feed Specialties Co., Inc., Good-Life, Division of Central Soya Co., and MAC–PAGE, Inc.''; and in the table in paragraph (c)(2) in the entry for ''012286'' by removing the sponsor name ''Premiere Agri Technologies, Inc.,'' and adding in its place ''ADM Animal Health & Nutrition Div.,'' and by removing the entries for ''017274, 021810, and 047427''.

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation of 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

### § 520.445b [Amended]

4. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate)* is amended in paragraphs (b) and (d)(4)(iii)(C) by removing ''017274'' and adding in its place ''012286''.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

### § 558.95 [Amended]

6. Section 558.95 *Bambermycins* is amended in paragraph (a)(4) by removing the entry for ''017274'' and numerically adding ''012286''.

### § 558.274 [Amended]

7. Section 558.274 *Hygromycin B* is amended in paragraph (a)(7) and in the table in paragraphs (c)(1)(i) and (c)(1)(ii) by removing the entry for ''047427'' and numerically adding ''012286''.

### § 558.485 [Amended]

8. Section 558.485 *Pyrantel tartrate* is amended in paragraph (a)(11) by

removing ''017274'' and adding in its place ''012286''.

**§ 558.625 [Amended]**

9. Section 558.625 *Tylosin* is amended in paragraph (b)(52) by removing ''021810'' and adding in its place ''012286''.

**§ 558.630 [Amended]**

10. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraphs (b)(3) and (b)(8) by removing ''017274'' and adding ''012286'' and in paragraph (b)(10) by removing ''017274, 021810, and 047427'' and numerically adding ''012286''.

Dated: August 31, 1995.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine*

[FR Doc. 95–22369 Filed 9–8–95; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8584]**

**RIN 1545–AK03**

## Capitalization of Interest; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains a correction to the final regulations [TD 8584] which were published in the **Federal Register** for Thursday, December 29, 1994 (59 FR 67187). The final regulations relate to the requirement to capitalize interest with respect to the production of property.

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

**FOR FURTHER INFORMATION CONTACT:** Jan L. Skelton, (202) 622–4970 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of these corrections are under section 263A(f) of the Internal Revenue Code.

### Need for Correction

As published, the final regulations contains an error that is misleading and in need of correction.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for Part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** In § 1.263A–9(f)(3), paragraph (v) of *Example 3.*, the last sentence is revised as follows:

**§ 1.263A–9 The avoided cost method.**

* * * * *

(f) * * *

(3) * * *

*Example 3.* (i) * * *

(v) * * * For Unit B, this amount is $775,000 ([$0 + $500,000 + $1,000,000 + $1,600,000]÷4).

* * * * *

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95–22382 Filed 9–8–95; 8:45 am]

BILLING CODE 4830–01–P

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

**[T.D. ATF–366; RE: Notice No. 801]**

**RIN 1512–AA07**

## The St. Helena Viticultural Area (94F–015P)

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

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This final rule establishes a viticultural area in Napa County, California, to be known as ''St. Helena.'' The petition was submitted by Mr. Charles A. Carpy, Chairman of the St. Helena Appellation Committee. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

**EFFECTIVE DATE:** October 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Lou Blake, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8210).

**SUPPLEMENTARY INFORMATION:**

### Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

### Rulemaking Proceeding

*Petition*

On March 9, 1994, ATF received a petition from Mr. Charles A. Carpy, Chairman of the St. Helena Appellation Committee, proposing to establish a new viticultural area in Napa County, California, to be known as ''St. Helena.'' The St. Helena Appellation Committee is composed of various vineyard and winery owners located throughout the St. Helena area. The proposed St. Helena viticultural area is located approximately 16 miles northwest of the city of Napa. It is located totally within the larger and previously established

Napa Valley viticultural area. The St. Helena viticultural area covers approximately 9,060 acres, and is densely planted to vines. There are over 30 wineries within the area. The petition provided sufficient information to show that the proposed area meets the regulatory requirements discussed previously. This information is shown beginning with the section entitled ''Evidence That Viticultural Area Name Is Widely Known.'' Mr. Charles Sullivan, Napa Valley historian, provided the petitioner with most of the historical information concerning the St. Helena area that is covered in the petition whereas Dr. Deborah Elliott-Fisk of the University of California provided the petitioner with most of the information in the petition concerning soils, geology and physical geography of the St. Helena area.

*Notice of Proposed Rulemaking*

In response to Mr. Carpy's petition, ATF published a notice of proposed rulemaking, Notice No. 801, in the **Federal Register** on November 4, 1994 (59 FR 55226), proposing the establishment of the St. Helena viticultural area. The notice requested comments from all interested persons by February 2, 1995.

*Comments to Notice of Proposed Rulemaking*

Six comments were received in response to the notice of proposed rulemaking (Notice No. 801). Three commenters—Mr. W. Andrew Beckstoffer of Beckstoffer Vineyards, Mr. Richard E. Walton of Beaulieu Vineyard, and Mr. Thomas Leonardini of Whitehall Lane Winery—state that a certain portion of the proposed viticultural area should not, at this time, be included within the boundaries of the St. Helena viticultural area. The portion of the proposed St. Helena viticultural area which these three commenters want excluded starts at the intersection of Zinfandel Lane with Highway 29 on the southern boundary of the area, then in a westerly direction along Zinfandel Lane to where it intersects with the north fork of Bale Slough, then in a northwesterly direction along the north fork of Bale Slough to where it intersects with the southwesterly straight line projection of Inglewood Avenue, then in a southwesterly direction along the straight line projection of Inglewood Avenue to the 500 foot contour line on the western side of the area, then along the 500-foot contour line in a northwesterly direction to Sulphur Creek, then in a southeasterly and then a northeasterly direction along Sulphur Creek until it intersects with Highway 29, then in a southeasterly direction along Highway 29 until it intersects with Zinfandel Lane, the point of beginning.

These three commenters feel that there is simply not sufficient precise data or local agreement at this time to justify a choice for this area. They feel that within a relatively short time, say five years, the grapegrowers, winemakers and local residents will so clarify the wine characteristics and local reference for the wine consumer that the viticultural area designation of this area will become clear to all. At this future time, according to these three commenters, the area would either be added to the St. Helena or Rutherford viticultural area depending on what the evidence shows. All three feel that the evidence at that time will show that this area most closely resembles the Rutherford viticultural area.

Mr. Beckstoffer states that as part of the Rutherford viticultural area process, he submitted detailed data regarding the geological features, elevation, soils, rainfall, and geology of this area. Mr. Beckstoffer indicates that he wants this previous data to be included in his petition requesting that this area not be included in any viticultural area until some future time when more information is available.

Mr. Beckstoffer states that prior testimony at the Rutherford viticultural area hearing shows that there are no significant differences in rainfall, elevation or soils in this area from that to the north, St. Helena, or to the south, Rutherford. Mr. Beckstoffer indicates that there was significant controversy, however, regarding the underlying geology of this area and the area to the north and south. Mr. Beckstoffer states that the geological features upon which a delimited grape growing area is defined as a viticultural area do not support the inclusion of this area in either St. Helena or Rutherford to the exclusion of the other. Consequently, Mr. Beckstoffer feels that the features of this area could presently support inclusion in either Rutherford or St. Helena.

Mr. Beckstoffer also states that this area should not be considered a part of the proposed St. Helena viticultural area just because a certain portion of the area in question is within the municipal limits of the city of St. Helena. Mr. Beckstoffer indicates that it is his understanding that the approved Spring Mountain and Howell Mountain viticultural areas include areas within the city of St. Helena. In addition, the proposed St. Helena viticultural area includes areas both within and outside the city of St. Helena. Furthermore, according to Mr. Beckstoffer, the municipal boundaries of the city of St. Helena have recently been amended and will undoubtedly be amended again in the future. Consequently, Mr. Beckstoffer states that the area in question should not be included or excluded from a viticultural area based on whether a portion of the area is located within the municipal limits of the city of St. Helena.

In summary, Mr. Beckstoffer states that the area in question is a very important grapegrowing area of the Napa Valley claimed for both the Rutherford and St. Helena areas. He further states that the geological features, history and local designation of this area are not precise enough at this time to define the area as part of Rutherford or St. Helena. However, Mr. Beckstoffer feels that with sufficient time, the factors identifying this area in question will be sufficient to justify the inclusion of the area in either Rutherford or St. Helena. Mr. Beckstoffer feels that the current consumer awareness and wine characteristics of grapes produced from this area seem to indicate that the area should be included in Rutherford but that additional time should help determine with greater clarity exactly what viticultural area this area in question belongs in. At some future time, according to Mr. Beckstoffer, this area could be assigned to either Rutherford or St. Helena with much more clarity, precision and general acceptance.

Another commenter—Mr. William A. Hayne—states that he has a vineyard in the area in question and that he does not agree with the proposal to exclude this area from the proposed St. Helena viticultural area. Mr. Hayne further states that viticultural areas in the Napa Valley seem to be destined to be divided up more or less by post office regions and that he wishes to be included in the St. Helena viticultural area as is presently provided for in the notice of proposed rulemaking.

Another commenter—Mr. Richard W. Forman of Forman Vineyard—states that he is very close to the eastern boundary of the proposed St. Helena viticultural area and feels that Forman Vineyard should be included within the St. Helena area. In fact, Mr. Forman states that his winery and vineyard are located within the city limits of St. Helena. He further states his property is located on the lower toe slopes of the eastern Howell Mountain range and as such, has an exposure which looks across the Silverado Trail near Meadowood Lane and into the center of St. Helena. Mr.

Forman indicates that his vineyard, originally established on what was called the Stonebridge property, is clearly more closely associated with its near valley floor neighbors physically, climatologically and geologically, than the further removed and proposed fans of Pratt Valley, Deer Park and Spring Valley. He further indicates that he agrees with Mr. Sullivan's statement in the St. Helena petition that it is difficult to differentiate exactly, on a historical basis, between the 400–600 foot contour on the eastern slopes of the proposed St. Helena viticultural area.

Mr. Forman states that Mr. Sullivan indicates in the petition that the actual Howell Mountain influence of differing climatology does not come into effect until one reaches well above the 600 foot elevation. Mr. Forman states that his vineyard property does not extend beyond the 600-foot contour line and therefore has a very similar climate to the valley floor. And finally, Mr. Forman states that, on a geological basis, his soils closely resemble the soils found in the Phelps Home Ranch 3 Corral III vineyard, noted in petition exhibit No. 30 and located in Spring Valley, which is within the proposed boundaries of the St. Helena viticultural area. Mr. Forman states that this close similarity between soils should establish that his vineyard soils are consistent with other St. Helena district soils and therefore his vineyard property should be included as part of the St. Helena viticultural area.

Mr. Forman indicates that the United States Department of Agriculture (USDA) soil map identifies his vineyard property's soil as a Butte Stony Loam and mentions that it is widely found along the lower eastern toe slopes between Deer Park and Rutherford Cross Roads, again suggesting that this would indeed conform as a characteristic soil type of the area. Mr. Forman states that the climate surrounding his property is quite like that found above the Silverado Trail from Howell Mountain Road to Deer Park Road, particularly in so far as his property is situated within one-fourth mile of the Silverado Trail and has an exposure and elevation only moderately different than these adjacent valley floor locations.

In summary, Mr. Forman states that because of his location within the city limits of St. Helena, because of his exposure and proximity to the valley floor, and because of his vineyard's geology, he feels that his property should be included within the St. Helena viticultural area.

The last commenter, Mr. Chuck Carpy, Chairman of the St. Helena Appellation Committee, states that his comment is in response to the two proposed boundary amendments which were submitted. In response to Mr. Forman's proposal to extend the boundary of the St. Helena viticultural area to include his vineyard property, Mr. Carpy states that the St. Helena Appellation Committee does not have any objection to this proposal. Mr. Carpy states that Mr. Forman's vineyard is located within the city limits of St. Helena and, to the best of his knowledge, is split by the proposed 400 foot contour line. Mr. Carpy indicates that the petitioners have reviewed Mr. Forman's data and find the soil types and geology to be consistent with those of the other toe-slopes of the Vaca (or Silverado) Range in the immediate vicinity. Mr. Carpy states that he has received information from Mr. Forman that indicates that Mr. Forman's vineyard property contains large deposits of old, uplifted Napa Riverbed materials, which suggests that the Napa River channel ran through the area historically. In this sense, according to Mr. Carpy, the area proposed for inclusion by Mr. Forman appears to be similar to the area on the eastern toe-slopes of Oakville, which were added to that viticultural area in the final rule establishing the Oakville viticultural area.

In addition, Mr. Carpy states that the petitioners have no objection with the inclusion of Mr. Forman's property in the St. Helena viticultural area since the proposed boundary expansion is small and the current boundary works a hardship on Mr. Forman because his vineyards are split.

In regard to Mr. Beckstoffer's proposed boundary amendment, Mr. Carpy states that the petitioners are opposed to any further change in the boundaries of the proposed St. Helena viticultural area. Mr. Carpy states that the present rulemaking concerns the St. Helena viticultural area and should not be used as an indirect method of appealing ATF's final rule on the Rutherford viticultural area. Mr. Carpy points out that there was no appeal to U.S. District Court of the Bureau's decision to exclude from Rutherford the area north of Zinfandel Lane, west of Highway 29, and south of Sulphur Creek (the area in question). Mr. Carpy states that it is clear from Mr. Beckstoffer's comment that Mr. Beckstoffer did not agree with the decision made regarding the establishment of the boundaries of the Rutherford viticultural area and consequently is trying to delay action on the area in question in hopes of eventually getting this area included within the Rutherford viticultural area.

Mr. Carpy states that ATF made its decision on the Rutherford viticultural area in July of 1993. He states that the argument that this decision should be revisited in the future provides no legitimate basis for opposing the St. Helena viticultural area petition. Mr. Carpy states that under the applicable regulations, ATF is bound to decide whether there is sufficient evidence to establish the St. Helena viticultural area as proposed by the petitioners. Mr. Carpy observes that Mr. Beckstoffer concedes such evidence exists when he states, ''The geological features upon which a delimited grape growing area are defined as a viticultural area * * * could support inclusion [of the area in question] in either [the Rutherford or the St. Helena Viticultural] Area.''

On behalf of the petitioners, Mr. Carpy states that all the requirements for the establishment of the St. Helena viticultural area have been met in the case of the area in question. Specifically, the name identification requirement has been met not only by the fact that a portion of the area is within city limits of St. Helena but also by numerous citations in the modern wine press, by historical documents pertaining to the so-called St. Helena District of the late 1800s and by local name recognition. According to Mr. Carpy, it is inconceivable to the petitioners that the properties of George Crane, who is widely acknowledged as one of the founding fathers of St. Helena (Crane Park in the city of St. Helena honors him), and John Lewelling, who also was prominently identified with St. Helena, could be considered as part of the Rutherford viticultural area. Mr. Carpy states that the petitioners have met their burden of proof. Mr. Carpy then quotes from ATF's final rule on the Rutherford viticultural area with respect to the area in question:

> Proponents of a northern boundary for Rutherford that is further north than Zinfandel Lane did not submit any evidence that this area between Zinfandel Lane and Sulphur Creek has ever been known, either currently or historically, as Rutherford. The Rutherford and Oakville Appellation Committee, on the other hand, submitted numerous maps and other name evidence which tends to show that this area has always been considered to be part of the greater St. Helena area.

Later in the final rule establishing the Rutherford viticultural area, it was stated that ''Most current and historical maps, as well as other name evidence, suggest that Zinfandel Lane is the most appropriate dividing line between Rutherford and St. Helena.'' Mr. Carpy indicates that to reject Zinfandel Lane as the most appropriate dividing line

between Rutherford and St. Helena would belie history and mislead consumers.

Mr. Carpy requests that all testimony and documentation from the Rutherford proceeding which pertain to the area in question be included in the record of the present rulemaking.

Mr. Carpy states that with regard to the required geographic evidence, the petitioners have placed the entire Sulphur Creek alluvial fan in the St. Helena viticultural area. The petitioners' expert geographer and soil scientist, Deborah Elliott-Fisk, describes that fan in the reporter's transcript of the public hearing on Rutherford, on page 48, as the drainage basin of Sulphur Canyon and Heath Canyon, including Spring Mountain, which ''extends through the town of St. Helena at least up to the vicinity of where the Beringer Winery is today.''

Mr. Carpy states that the area in question splits the Sulphur Creek alluvial fan at Highway 29 (on an east-west axis) and at Sulphur Creek (north-south), thereby including in the St. Helena appellation only a portion of this geomorphic unit. Mr. Carpy indicates that anything less than such artificial bisection of the Sulphur Creek alluvial fan would place historical St. Helena wineries like Louis Martini and Beringer Vineyards in the Rutherford viticultural area. Mr. Carpy states that there is no explanation or evidence of how or why the area in question is viticulturally distinct from the area east of Highway 29 or from any other portion of St. Helena.

Mr. Carpy indicates that both before and during the Rutherford viticultural area proceeding, Ms. Elliott-Fisk conducted extensive field research throughout the Napa Valley, including the area in question. Ms. Elliott-Fisk concluded in her comments on the Rutherford viticultural area that ''the Sulphur Canyon Fan should be left for a future St. Helena viticultural area, as it has rocky soils (with a higher percentage of boulders and large cobbles) and is dominated by rhyolite and other volcanic lithologies with a soil matrix of fine sands and secondary clays, providing for moderate to moderately high vine vigor under slightly warmer climates and increased precipitation than in the Rutherford region.'' Mr. Carpy states that the petitioners now seek to follow through on ATF's decision in the Rutherford proceeding by placing the entire Sulphur Creek alluvial fan in the St. Helena viticultural area.

*ATF Boundary Decisions*

After thoroughly reviewing all the comments submitted in response to the notice of proposed rulemaking (Notice No. 801) on the St. Helena viticultural area, ATF has made the following decisions concerning the two requests for boundary changes:

1. *Forman Proposal.* ATF agrees that the Forman vineyard property is split by the boundaries proposed in Notice No. 801 and that the property is located within the city limits of St. Helena. In addition, both Mr. Forman and the petitioners agree that the soil types and geology of this vineyard property are consistent with those of other areas located within the proposed St. Helena viticultural area. For these reasons, ATF has determined that the Forman vineyard property should be included within the boundaries of the St. Helena viticultural area. Consequently, Mr. Forman's proposed boundary change is being adopted in the descriptive section of this final rule.

2. *Beckstoffer Proposal.* ATF believes that the St. Helena petitioners have provided adequate historical, name, and geological evidence to include the area in question in the St. Helena viticultural area. As part of the Rutherford viticultural area process, ATF reviewed all the evidence presented during the comment period and the public hearing to determine the best boundaries for the Rutherford viticultural area. As a result of that review, it was determined that the best dividing line between Rutherford and St. Helena, for viticultural purposes, was Zinfandel Lane. Mr. Beckstoffer has not presented any new evidence which would lead us to the conclusion that the area in question should be part of the Rutherford viticultural area. To the contrary, all historical and name evidence which we have reviewed suggests that this area should be considered as part of the St. Helena area. In addition, the northern boundary of the Rutherford viticultural area was largely determined on the basis of where the southern edge of the Sulphur Canyon Fan approximately ends. Since it was determined that the Sulphur Canyon Fan ends somewhere just south of Zinfandel Lane, it was decided that the northern boundary of the Rutherford viticultural should be Zinfandel Lane. Therefore, since the Sulphur Canyon Fan includes the area north of Zinfandel Lane on both the east and west sides of Highway 29, we have determined that the area in question should be included within the St. Helena viticultural area.

In addition, we see no benefit to delaying a decision on this area for 5 years or more. While it is possible that such a delay could produce some evidence that certain wine characteristics and local reference for the wine consumer might point toward a Rutherford designation for some wines from this area, it would appear that such evidence would at most be limited and subject to dispute. In addition, there is no current evidence available which would be a basis for rejecting the petitioners' current southern boundary proposal. Since the petitioners have provided adequate evidence for their boundary proposal and since no new evidence has been submitted which would cause us to find otherwise, we have decided to adopt the petitioners' boundary proposal as specified in Notice No. 801 along with Mr. Forman's proposed boundary change.

*Evidence That Viticultural Area Name Is Widely Known*

Data prepared by Mr. Charles Sullivan for the petitioners provides the following historical information.

The town of St. Helena was founded by Henry Still, who bought land from the Edward Bale family in 1855. By 1858 there was a school house and a little Baptist church. Four years later Professor William Brewer of the Whitney party called it a ''pretty little village with fifty or more houses . . . nestled among grand old oaks.'' Early winemakers in the St. Helena area included Charles Krug and George Belden Crane. At the end of the 1879 vintage the *San Francisco Post* ran an article on northern California wines which noted the flavor characteristics of Napa clarets. This article was copied by the *St. Helena Star* which predicted that there would be 2,000 acres of grapes planted in the Napa Valley in 1880. According to Mr. Sullivan, the final total was closer to 3,000, and concentrated in the St. Helena area.

As early as 1869, San Francisco's *Alta California* was making reference to a ''St. Helena district,'' as did the *Pacific Rural Press*. These were references to vineyard plantings in the area. In 1872 the *Napa Reporter* made reference to the boom in vineyard land around St. Helena. The *Alta California* ran an article on the area in 1878, treating St. Helena as a specific district with a great reputation. By then Charles Krug, the Beringers, Crane, John Lewelling, H. A. Pellet, and 14 other producers had built cellars in the St. Helena area.

In 1875 Krug and Pellet organized the producers and growers in the district, a move that culminated in the formation of the St. Helena Viticultural Club on January 22, 1876. According to Mr. Sullivan, others outside the district

could join, but it was a local St. Helena organization. In 1880 the Club constructed Vintners Hall, a two story building with a reading room, meeting rooms, and a social hall upstairs.

Mr. Sullivan states that by the end of the 1870s there was no question concerning Napa's special reputation as a winegrowing region, or about St. Helena's as a discrete district in that region. As support for this statement, Mr. Sullivan cites the *Alta California* which concluded in an article published in 1880 that ''Napa is now the leading wine-growing county of California, and * * * St. Helena has become the center of the most prosperous wine district in the State.''

According to Mr. Sullivan, by the turn of the century Napa prices were still higher than those of other districts, but the special position accorded St. Helena wines had ceased to exist. The popular image of the wines of Oakville, Rutherford, Larkmead, and Howell Mountain had ended the perception of St. Helena wines standing above all others. After Prohibition, the regional association of the leading Napa Valley producers was far from foremost in consumers' minds and in the minds of wine writers according to Mr. Sullivan. However, Mr. Sullivan states that more recently there has been a tendency for wine writers to make reference to the St. Helena ''district'' and to its wines, particularly to its Cabernet Sauvignons.

In addition to the historical name information mentioned above, the ''St. Helena'' name appears on a U.S.G.S. 7.5 minute series map entitled ''St. Helena Quadrangle'' which includes the city of St. Helena and much of its surrounding area.

*Evidence of Boundaries*

According to the petition, there have never been precise historic boundaries for the St. Helena viticultural district. However, the petitioners state that history does provide an imprecise ''St. Helena District'' within the geographic structure of State winegrowing established by the first Board of State Viticultural Commissioners in the 1880s. According to the petition, the State was divided into districts, one being Napa, which included Napa, Solano, and Contra Costa Counties. Charles Krug was the first commissioner for the district in 1880. Napa County was then divided into administrative districts: Napa (City), Yountville, St. Helena, and Calistoga. These were not considered viticultural districts at the time. The St. Helena District included the vineyards of Howell Mountain, most of Rutherford, and Larkmead. This is discussed in E.C. Priber's report to the Board in 1893. Even Chiles and Conn Valleys were included in the St. Helena District, although Priber gave separate statistics for these areas.

Although the wineries and vineyardists in the Priber report are listed in administrative districts, Priber's man in the field, A. Warren Robinson, asked each where his or her operation was located, and the answer was given as a place, not necessarily a post office. Bernard Ehlers said he lived at Lodi Station. Mrs. Lillie Coit listed Larkmead. According to the petitioner, such data make it possible to make an attempt to draw historically accurate lines.

A more accurate listing of viticultural districts was given by Charles Krug in his report of 1887. He traces the development of each district in Napa County since 1881, by acreage, production, and type of grape vines. Krug listed Yountville, Oakville, Rutherford, St. Helena, Spring Mountain, Howell Mountain, Calistoga and five others. Although he did not include a map, the precision of his statistics indicates that he and others had the limits of these districts in mind.

From the information discussed above, the petitioner has tried to plot the northern and southern boundaries of the St. Helena viticultural area. From a historical point of view, the petitioner states that any one of three landmarks could be used as the northern boundary of the St. Helena viticultural area. These landmarks include Ritchie Creek, Bale Lane, and Big Tree Road. However, from a practical, as well as historical point of view, Bale Lane is the best choice.

The southern boundary of the St. Helena viticultural area was discussed at length during the December 9, 1992, ATF public hearing held in Napa, California, concerning the northern boundary of the Rutherford viticultural area. From the information submitted at that hearing, it was determined that Zinfandel Avenue, known locally as Zinfandel Lane, was the best northern boundary for the Rutherford viticultural area. Consequently, Zinfandel Avenue (Zinfandel Lane) is appropriate as the southern boundary of the adjacent St. Helena viticultural area.

The southeast boundary of the St. Helena appellation includes the Spring Valley area since this area was included in the St. Helena area on the 1895 ''Official Map of the County of Napa.'' On this map, the properties of George Mee and Antonio Rossi (Spring Valley) were listed as being in the St. Helena district whereas Charles Scheggia, just to the south, listed himself as being in Rutherford.

According to the petitioner, the western boundary of the St. Helena viticultural area is not strictly delineated by historical custom. The petitioner states that this western boundary should be dictated by the eastern boundary of the adjacent Spring Mountain District viticultural area which utilizes the 400-foot contour line. The petitioner states that although some people might draw the western boundary of the St. Helena viticultural area at the 500 or 600-foot contour line, the 400-foot contour line defies no historical precedent and prevents the overlapping of the St. Helena viticultural area with the Spring Mountain District viticultural area.

In regard to the eastern boundary, historical records indicate that Conn Valley is a separate area and should not be included in the St. Helena viticultural area. These records indicate, however, that Pratt Valley is clearly part of the St. Helena area from the location of the Pratt and Chabot wine growing properties. In addition, the Crystal Springs Road area and Dago Valley should be included, due more to recent developments there rather than earlier history. However, the petitioner states that the old Rossini property, where the historic Burgess-Souverain Winery is located today, and the Leunenberger property, where the original Sutter Home-Ballantine Winery was located (today Deer Park Winery), should not be included because they are located on the lower slopes of Howell Mountain rather than in the St. Helena area.

The petitioner uses mostly the 400-foot contour line and a short portion of Howell Mountain Road and a longer portion of Conn Valley Road to delineate the eastern boundary of the proposed St. Helena viticultural area.

*Geographical Features*

Data prepared by Dr. Elliott-Fisk in support of the petition provides the following geographical information.

*Climate.* The proposed St. Helena viticultural area lies within a relatively narrow and constricted portion of the upper Napa Valley proper. There exists a subtle interaction of climatic factors which affect grapes grown in this valley floor area. These subtle climatic influences are part of a continuum across the entire floor of the Napa Valley.

The Napa Valley proper is classified as a coastal valley. Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up Napa

Valley. This marine air incursion is caused by warming of the valley floor and surrounding hillsides during the daylight hours of the growing season. This warming land mass causes the air in the area to rise, creating pressure gradients which draw in marine air off of San Pablo Bay to the south. During the growing season, this phenomenon generally begins in the early afternoon and continues into the evening. Due to proximity to the bay, the areas in the southern portion of the valley receive the most direct impact of these pressure gradient winds. These winds have a cooling effect throughout the Napa Valley.

During the grape growing season, this cooling plays an important role in the development of the grapes by allowing them to better retain their natural acidity which is critical in the production of high quality wines, according to Dr. Elliott-Fisk. In the St. Helena viticultural area, this cooling effect is moderated compared to the areas further south. However, while the St. Helena area has relatively warm conditions, it is the daily maximum extremes, for which the area to the north (Calistoga) is better known, that distinguish the St. Helena and Calistoga areas.

Dr. Elliott-Fisk indicates that traditionally, the dividing line between the area of Calistoga's higher daily extremes and St. Helena's warm coastal climate has been the section of land around Bale Lane. It is at this point that the Napa Valley and Napa River take a pronounced directional change of course from north/northwesterly to more westerly. To the north of Bale Lane, the exposure of the valley floor to the sun also is more directly aligned than to the south where there is more shading.

The area to the north of the St. Helena viticultural area, particularly around the city of Calistoga, is also affected by a secondary marine air incursion, far less dramatic than that off of San Pablo Bay, which penetrates the upper Napa Valley through the Knights Valley area. This marine influence, according to Dr. Elliott-Fisk, does not typically penetrate as far south as the St. Helena viticultural area. When present, these moist, cooling winds serve to moderate the generally hotter temperatures in Calistoga, making this area ideal for growing premium wine grapes.

Dr. Elliott-Fisk also finds that there are significant climatic differences between the St. Helena viticultural area and the surrounding mountains. To the east of St. Helena lies Howell Mountain and to the west is Spring Mountain. These mountain areas range in elevation from 400 to 2,600 feet for Spring Mountain and from 1,400 to 2,400 feet for Howell Mountain. On average, temperatures fall along the valley floor approximately 2.8 degrees Fahrenheit for each 1,000 foot fall in elevation.

The mountain areas with south or southwest slopes, such as those generally found in the Howell Mountain viticultural area, receive approximately 20 percent more solar radiation during the growing season compared to the valley floor. Northeast and northwest slopes, such as those that typically occur in the Spring Mountain District viticultural area, receive approximately 20 percent less solar radiation than those found on the valley floor in the St. Helena viticultural area. In addition to these differences related to aspect, the relative absence of fog in the higher altitudes increases the solar radiation there compared to the valley floor which often is covered by early morning fog.

According to Dr. Elliott-Fisk, precipitation has been more important in the formation of topography and soils in the Napa Valley than in the definition of distinct climate zones. Outside of annual physiological water needs which are almost exclusively augmented by irrigation, precipitation directly affects grape vines during late spring and early fall, which are the critical periods of the growing and harvest seasons. Cooler areas, those generally found to the south of the St. Helena appellation, are more negatively affected by such conditions.

*Soils, Geology and Physical Geography*

The St. Helena viticultural area is in the northern Napa Valley and is defined by Dr. Elliott-Fisk as the valley floor area and lower mountain slopes (i.e., toe-slopes) from Zinfandel Lane in the south to Bale Lane in the north.

According to Dr. Elliott-Fisk, the geology of the St. Helena area is characterized by steep mountain fronts composed of the (1) Franciscan Formation (largely sandstones, mudstones and various metamorphic inclusions) overlain by the moderate thicknesses of Sonoma Volcanics on the west side in the Mayacamas Range, and (2) deep flows of Sonoma Volcanics, volcanic vents, and volcanic domes over Great Valley sandstones on the east side in the Vaca Range. Both mountain slopes have been faulted and heavily eroded, with much of this activity believed to be synonymous with the formation of the Sonoma Volcanics in the last 2–5 million years.

Dr. Elliott-Fisk further states that the topography of the Napa Valley floor is largely the product of (1) the marine incursion of San Pablo Bay, and consequent marine erosion and deposit, (2) tectonic uplift and land displacement along faults and fold structures (e.g., anticlines), (3) bedrock resistance to erosion, (4) slope stability, and (5) discharge volumes of the Napa River and its tributaries. The St. Helena viticultural area, extending from Bale Lane on the north to Zinfandel Lane on the south, has a fairly uniform, steep gradient (as compared to the entire Napa Valley floor), indicating that it is a zone of erosion of a former more powerful Napa River. The valley in this area is narrow and is almost entirely the product of river erosion, unlike any other stretch of the valley floor. The one break in gradient occurs where the river turns southward near Big Tree Road (just south of Bale Lane) and exerts more force to cut through bedrock. Thus, although alluvial fans extend across the valley floor from their tributary canyons to the Napa River, the fans are small and relatively young compared to the rest of Napa Valley. Sulphur Creek fan is the largest of the group, as it issues from a very large drainage basin. Fans of the eastern side of the proposed appellation are very small, largely due to the resistance of obsidian (i.e., volcanic glass) bedrock here and small tributary basin size.

The topographic uniformity of the St. Helena viticultural area is further substantiated by climatological data and bioclimatic maps. Growing degree-days (i.e., temperature regime), according to Dr. Elliott-Fisk, are very uniform along this stretch of the valley floor and lower slopes, averaging just under 3600 degree-days. Mean annual precipitation is 35–38 inches. Just north of the northern boundary of the St. Helena viticultural area (e.g., around Dunaweal Lane), the vegetation changes from Valley Oak Savanna to Mixed Hardwood Woodland. These gradients of climate and vegetation from south to north up Napa Valley, according to Dr. Elliott-Fisk, further support the designation of viticultural areas, as climate is an important factor influencing vine growth and fruit characteristics, with natural vegetation telling the viticulturalist what vine production will be like.

*Soils and Geomorphology of the Napa Valley*

Dr. Elliott-Fisk states that soils can be consistently identified and mapped in Napa Valley through knowledge of the geomorphology (i.e., landforms and landform history) of the area. These soil differences are relevant viticulturally and can be used in the delimitation of viticultural areas. This soil and geomorphic mapping, which is based on

very detailed field and laboratory studies, produces soil units that are similar to those shown in the Napa County Soil Survey (USDA-Soil Conservation Survey), but with more detail, precision, and most importantly, a different classification scheme, according to the petitioner. The resolution of the mapping of Napa Valley's soils has increased from the 1938 survey (and the old Marbut soil classification scheme) to the newer 1977 survey (using the new 7th Approximation system of soil classification) to a more detailed depiction of Napa Valley's soils based on an increased understanding of (1) the geomorphological history of the Napa Valley, and (2) the importance of soil parent material and time as soil-forming factors. There are many more soil types (or potential soil series) in Napa County than the Napa County Soil Survey depicts according to the petitioner.

Dr. Elliott-Fisk further notes that a geomorphic (landscape) surface of a given age will have soils of the same type across it. This is because soil formation is controlled by five factors (known as the soil-forming factors): climate, biota (plants and animals), parent material, relief (topography) and time. The petitioner states that much of the variation of soil types in Napa County is due to variation in the parent material and time factors. Different soil types will be derived from sedimentary bedrock versus volcanic bedrock, whether or not these soils are upland residual soils (with weathering and soil formation in place or *in situ*) or transportation/depositional soils (with soil formation beginning once river or other sediments are deposited). Alluvial soils of different ages (old versus young) will also differ significantly.

On any particular geomorphic surface (such as the Sulphur Creek fan), the parent material, relief and time factors are held constant, with the soils very similar (if not identical) across this surface. For depositional landforms (e.g., mudflow lobes, river terraces, alluvial fan units, etc.), the older deposits will have more strongly formed soils. If a geomorphic surface is disturbed by erosion or deposition, its soil will be altered (if not destroyed), with a new soil then forming.

In Napa Valley, according to Dr. Elliott-Fisk, distinct differences are seen between hillside soils and valley floor soils, at least in most situations. Hillside soils tend to be formed from bedrock and are shallow, whereas valley floor soils tend to be formed from alluvium, colluvium or bay deposits and are often deep. As Napa Valley has been tectonically active, however, these deeper, depositional soils are occasionally found up on the hillsides, uplifted above the valley floor. It is important to separate these depositional hillside soils from residual bedrock soils. They have much higher water-holding capacities and deeper rooting depths, influencing vine growth significantly.

Dr. Elliott-Fisk further indicates that the floor of Napa Valley (excluding the bedrock ''islands'' which form small hills) has soils formed on (1) alluvial fans of various lithologies, textures, and sizes emerging from tributary watersheds towards the Napa River, (2) alluvial floodplains of various ages along the Napa River and the lower reaches of its tributaries (such as Sulphur Creek), and (3) bay deposits of various types, formed when San Pablo Bay extended into the valley proper. The alluvial fans in particular show marked contrasts in soil types north-south and east-west in the valley as a function of their (1) watershed or drainage basin geology and (2) stream gradient (i.e., topography). Dr. Elliott-Fisk concludes that the soils scientist then expects to find one soil series on fans derived from sedimentary bedrock and another on fans derived from volcanic bedrock.

*Geomorphic Units of the St. Helena Viticultural Area*

The valley floor of the St. Helena viticultural area is covered by a series of small fans and contains important areas of Napa River floodplain. Dr. Elliott-Fisk has described the geomorphic units as follows:

*North to South on West Side of Valley:*

(1) Ritchie Creek Fan (the southern edge of it extending south of Bale Lane into the viticultural area); principally in the area north of St. Helena;

(2) Mill Creek Fan;

(3) Hirsch Creek Fan;

(4) York Creek Fan;

(5) Sulphur Creek Fan; and

(6) Bear Canyon Fan Complex (in approved Rutherford viticultural area).

*North to South on East Side of Valley:*

(1) Simmons Canyon Fan (north of the St. Helena viticultural area);

(2) Dutch Henry and Biter Creek Fan Complex (north of the St. Helena viticultural area, reaching almost to Bale Lane);

(3) Unnamed Fan west of Bell Canyon Reservoir and Crystal Springs Road;

(4) Base of Pratt Valley (very small fan);

(5) Base of Deer Park (unnamed tributary; small fan);

(6) Base of Spring Valley (very small fan; mostly within Spring Valley); and

(7) Conn Creek Fan Complex (in approved Rutherford viticultural area).

*Napa River Floodplain and River Terraces:*

(1) Current incised channel of the Napa River;

(2) Current floodplain of the Napa River; and

(3) Older floodplains of the Napa River at higher elevations.

[These landforms follow the channel of the Napa River, except for older terraces along the hillsides, which are largely obscured by dense hillside woodland and forest; these terraces are discovered through intensive field studies.]

Dr. Elliott-Fisk notes that the geomorphic depositional units (i.e., landforms) in the St. Helena viticultural area are composed almost exclusively of volcanic lithologies (around 85–90 percent volcanics typically, occasionally dropping to 70 percent on parts of the Sulphur Creek fan, with the remainder sedimentary and metamorphic inclusions from the bedrock underlying the Sonoma Volcanics). The upper part of the Sulphur Creek Basin contains small units of sandstone and metamorphic lithologies exposed at the surface through faulting and slope failure. Despite this, volcanic rhyolitic tuff, rhyolite, dacite and andesite are by far the dominant surficial geologies, compared to the Bear Canyon Fan Complex to the south which is 30 percent or less volcanics and the remainder sedimentary.

Dr. Elliott-Fisk further observes that although several types of volcanic rocks compose the St. Helena hillside, the most widespread (and as such, ubiquitous) units are volcanic ash-flows, referred to as tuffs, with occasional volcanic mudflows. The matrix is rhyolitic in composition, with incorporated clasts of obsidian, rhyolite, andesite, dacite and tuff. Occasional metamorphic clasts of cobble or smaller size are seen. This geologic parent material is slightly acidic to acidic, with water-holding capacity of tuffaceous bedrock units moderate. This potential soil parent material is brought down both slopes to the west and east of the valley floor by hillside erosion, runoff, and tributary streamflow.

According to Dr. Elliott-Fisk, the Napa River has incised through these fan deposits discharging on the valley floor and migrated as a consequence of the resistance of these deposits versus its own stream power. The Napa River floodplain, and its associated recent terraces, varies in width throughout this section of Napa Valley but has formed important terraces along the eastern valley edge. Distinct breaks in the natural vegetation are seen at the terrace/alluvial fan transition, as the terraces have more fertile soils with a greater water-holding capacity. As the width of the valley floor in the St. Helena area is on the average less (e.g., more narrow) than anywhere else in the

Napa Valley, these terraces form less viticultural acreage than in the southern or middle sections of Napa Valley.

The lower hillside slopes below the 400-foot elevation are difficult to map on a broad scale depicting geomorphic surfaces. This is largely a function of abrupt changes in slope angle and vegetation type, which influence long-term slope stability. Small areas of uplifted depositional surfaces (alluvial fans and stream floodplain terraces) were found across these lower slopes in the St. Helena area, however.

*Soils of the St. Helena Viticultural Area*

With regard to the soils within the St. Helena viticultural area, Dr. Elliott-Fisk states that the Sonoma Volcanics rim all sides of the valley in the St. Helena area, and as such the depositional valley floor soils (which may be very bouldery deposits across alluvial fans or finer, but still gravelly deposits along the Napa River proper, all principally Xerolls) are volcanic in origin, and deep, very gravelly sandy loams to sandy clay loams to clay loams, with low to moderate water holding capacities. Sediments have been transported relatively short distances from their origins, as this is the headwater area of the Napa River system, and as such the soils contain a higher percentage of coarse clasts (especially boulders), with sand dominating the fine fraction of almost every soil. Dr. Elliott-Fisk notes that small sections of the upper stream basins of Sulphur Canyon and the Spring Mountain region contain the massive Franciscan marine sandstone and conglomerate, with its affiliated volcanic and metamorphic inclusions. The lithology of the fine clasts that compose the alluvial fans in this immediate region (i.e., Sulphur Creek fan) include a higher portion of non-volcanic clasts (up to 15 percent, to occasionally 30 percent) than alluvial fans to the north, such as the Ritchie Creek fan below Diamond Mountain, located largely north of the northern St. Helena viticultural area boundary. However, the percentage of non-volcanic clasts is much higher to the south of the St. Helena viticultural area (i.e., Bear Canyon fan). The lower toe-slopes of the mountain slopes in the St. Helena area (below the 400-foot elevation) contain both Xerolls and Xeralfs, depending on slope stability and age.

Dr. Elliott-Fisk states that she has excavated an additional 17 soil trenches in the process of her scientific investigation in this area. She states that she has done previous soils work in this region and has excavated over 350 soil trenches in Napa Valley. She has provided, as part of the petition, profile drawings, descriptive field, and analytical laboratory data for 17 soils by horizon. Four of these soils are from property outside of the boundaries of the St. Helena viticultural area and were chosen to be representative of those areas.

*Soil Summary*

The soils of the St. Helena viticultural area, according to Dr. Elliott-Fisk, are deep alluvial soils of moderate age, with well-formed horizonation, textural B horizons, sandy clay loam to clay loam textures, reddish colors, high gravel content (primarily of cobbles), and near neutral pH. In this erosional zone of the valley floor, where the width is restricted, groundwater and the groundwater table have a significant influence, bringing in additional dissolved minerals and increasing the pH (and nutritional content) above the valley floor soils to the north (Calistoga region) and south (Rutherford and Oakville), as well as the hillsides (Spring Mountain, Diamond Mountain, Howell Mountain and Pritchard Hill). The soil drainage in the St. Helena area is typically good since the water table drops in the spring, summer and fall to allow the vines an adequate root zone with free oxygen and carbon dioxide, thus providing vigorous conditions for grape growing. The moderate climate, with warm summer temperature, balances well with this soil environment, and allows the wine grower to manipulate the vines to extract what the winemaker desires from a particular varietal. As such, Dr. Elliott-Fisk concludes that this provides a stable and predictable environment for grape growing, and the physical geography of the region has promoted the production of fine wines in the St. Helena area for many decades.

*Conclusion*

The St. Helena viticultural area is uniform topographically and can be distinguished from the steeper hillsides to the east (Howell Mountain) and west (Spring Mountain District) as well as from the valley floor areas to the south (Rutherford) and north (Calistoga). This is an area where the valley floor narrows from around 19,000 feet at Oakville Cross Road and 11,000 feet at Zinfandel Lane to around 3,500 feet at Lodi Lane and Bale Lane. The area is marked by a uniform, steep gradient and significant river erosion. The bedrock geology is primarily volcanic, in contrast to the sedimentary soils to the south.

Along the eastern edge of the St. Helena area, geologic and geographic evidence support the inclusion of Spring Valley and Pratt Valley and the exclusion of Conn Valley and the higher mountain slopes.

*Viticultural Area Boundary*

The boundary of the St. Helena viticultural area may be found on three United States Geological Survey (U.S.G.S.) maps with a scale of 1:24,000. The boundary is described in § 9.149.

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region. In addition, no new recordkeeping or reporting requirements are imposed by this regulation. Accordingly, a regulatory flexibility analysis is not required.

*Executive Order 12866*

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this regulation is not subject to the analysis required by this Executive Order.

*Drafting Information.* The principal author of this document is Robert White, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Par. 1.** The authority citation for Part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Subpart C is amended by adding § 9.149 to read as follows:

### Subpart C—Approved American Viticultural Areas

* * * * *

**§ 9.149 St. Helena.**

(a) *Name*. The name of the viticultural area described in this section is ''St. Helena.''

(b) *Approved maps*. The appropriate maps for determining the boundary of the St. Helena viticultural area are three U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) ''St. Helena Quadrangle, California,'' edition of 1960, revised 1993.

(2) ''Calistoga Quadrangle, California,'' edition of 1958, photorevised 1980.

(3) ''Rutherford Quadrangle, California,'' edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary*. The St. Helena viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Rutherford Quadrangle map at the point of intersection between State Highway 29 and a county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, the boundary proceeds in a southwest direction along Zinfandel Avenue to its intersection with the north fork of Bale Slough (blueline stream) near the 201 foot elevation marker;

(2) Thence in a northwesterly direction approximately 2,750 feet along the north fork of Bale Slough to a point of intersection with a southwesterly straight line projection of a light duty road locally known as Inglewood Avenue;

(3) Thence in a straight line in a southwesterly direction along this projected extension of Inglewood Avenue approximately 2,300 feet to its intersection with the 500 foot contour line in Section 7, Township 7 North (T7N), Range 5 West (R5W);

(4) Thence along the 500 foot contour line in a generally northwesterly direction through Sections 7, 1 and 2, to its intersection of the western border of Section 2, T7N, R6W;

(5) Thence northerly along the western border of Section 2 approximately 500 feet to its intersection with Sulphur Creek in Sulphur Canyon in the northwest corner of Section 2, T7N, R6W;

(6) Thence along Sulphur Creek in an easterly direction approximately 350 feet to its intersection with the 400 foot contour line;

(7) Thence along the 400 foot contour line in a generally easterly, then northwesterly, direction past the city of St. Helena (on the St. Helena Quadrangle map) to a point of intersection with a southwesterly straight line projection of the county road shown as Bale Lane in the Carne Humana Rancho on the Calistoga Quadrangle map;

(8) Thence along the projected straight line extension of Bale Lane in a northeasterly direction approximately 700 feet to the intersection of State Highway 29 and Bale Lane and continuing northeasterly along Bale Lane to its intersection with the Silverado Trail;

(9) Thence in a northwesterly direction along the Silverado Trail approximately 1,500 feet to an unmarked driveway on the north side of the Silverado Trail near the 275 foot elevation marker;

(10) Thence approximately 300 feet northeasterly along the driveway to and beyond its point of intersection with another driveway and continuing in a straight line projection to the 400 foot contour line;

(11) Thence in a northerly and then generally southeasterly direction along the 400 foot contour line through Sections 10 (projected), 11, 12, 13, 24 and 25 in T8N, R6W, Section 30 in T8N, R5W, Sections 25 and 24 in T8N, R6W, Sections 19 and 30 in T8N, R5W to a point of intersection with the city limits of St. Helena on the eastern boundary of Section 30 in T8N, R5W, on the St. Helena Quadrangle map;

(12) Thence north, east and south along the city limits of St. Helena to the third point of intersection with the county road known as Howell Mountain Road in Section 29, T8N, R5W;

(13) Thence in a northeasterly direction approximately 900 feet along Howell Mountain Road to its intersection with Conn Valley Road;

(14) Thence northeasterly and then southeasterly along Conn Valley Road to its intersection with the eastern boundary of Section 28, T8N, R5W;

(15) Thence south approximately 5,200 feet along the eastern boundary of Sections 28 and 33 to a point of intersection with the 380 foot contour line near the southeast corner of Section 33, T8N, R5W, on the Rutherford Quadrangle map;

(16) Thence in a northwesterly direction along the 380 foot contour line in Section 33 to a point of intersection with a northeasterly straight line projection of Zinfandel Avenue;

(17) Thence in a southwesterly direction approximately 950 feet along this straight line projection of Zinfandel Avenue to its intersection with the Silverado Trail;

(18) Thence continuing along Zinfandel Avenue in a southwesterly direction to its intersection with State Highway 29, the point of beginning.

Signed: August 9, 1995.

**Daniel R. Black,**

*Acting Director.*

Approved: August 21, 1995.

**Dennis M. O'Connell,**

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

[FR Doc. 95–22486 Filed 9–8–95; 8:45 am]

BILLING CODE 4810–31–U

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## Office of Foreign Assets Control

## 31 CFR Part 560

## Iranian Transactions Regulations; Implementation of Executive Orders 12957 and 12959

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

**ACTION:** Final rule; amendments.

**SUMMARY:** The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Iranian Transactions Regulations to implement the President's declaration of national emergency and imposition of sanctions against Iran.

**EFFECTIVE DATE:** September 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Regarding the issuance of licenses, Steven I. Pinter, Chief, Licensing Division (tel.: 202/622–2480); regarding banking and compliance questions, Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); regarding Iranian government entities, J. Robert McBrien, Chief, International Programs Division (tel.: 202/622–2420); regarding legal questions, William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type ''/GO FAC'' or call

202/515–1530 for disks or paper copies. This file is available in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats.

**Background**

In Executive Order 12613 of October 29, 1987 (3 CFR, 1987 Comp., p. 256, 52 FR 41940), President Reagan imposed import sanctions against Iran, invoking the authority, *inter alia*, of section 505 of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9 (''ISDCA''). In Executive Order 12957 of March 15, 1995 (60 FR 14615, March 17, 1995), President Clinton declared a national emergency with respect to the actions and policies of the Government of Iran and imposed additional sanctions against Iran, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701–06 (''IEEPA''). The President substantially supplemented and amended the sanctions in those orders in Executive Order 12959 of May 6, 1995 (60 FR 24757, May 9, 1995), invoking the authority, *inter alia*, of IEEPA and ISDCA. In the Executive orders, the President authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of those orders. In implementation of these orders, the Office of Foreign Assets Control is amending in their entirety the Iranian Transactions Regulations (as amended, the ''Regulations'').

The Regulations continue the prohibitions previously contained in 31 CFR part 560 concerning the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin. The Regulations also expand the prohibitions to (a) the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services; (b) the reexportation to Iran of certain goods and technology of U.S. origin; (c) any transaction by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran; (d) any new investment by a United States person in Iran or in property owned or controlled by the Government of Iran; (e) the approval or facilitation by a United States person of the entry into or performance by a foreign entity owned or controlled by a United States person of a transaction or contract if the United States person is prohibited from engaging directly in such activity; and (f) any transaction by any United States person or within the United States that evades or avoids, or attempts to violate, these prohibitions.

All General Licenses and General Notices issued by the Office of Foreign Assets Control prior to September 11, 1995 (see 60 FR 40881, Aug. 10, 1995), may continue to be relied on to validate actions prior to this date during the period of their validity. Specific licenses issued by OFAC prior to this date continue in effect according to their terms unless modified by the Office of Foreign Assets Control. Authorizations contained in General Licenses issued prior to publication of the Regulations can now be found in the following sections.

| General License No. | Date of Issuance | Regulations Section |
|---|---|---|
| 1 | 05/19/95 | 560.515 |
| 2 | 06/01/95 | 560.516 |
| 3 | 06/01/95 | 560.517 |
| 4 | 06/13/95 | 560.518, 560.524 |
| 5 | 06/14/95 | 560.210, 560.523 |
| 6 | 06/14/95 | 560.521 |
| 7 | 06/14/95 | 560.519 |
| 8 | 06/14/95 | 560.520 |
| 9 | 06/14/95 | 560.512 |
| 10 | 06/14/95 | 560.510 |
| 11 | 07/21/95 | 560.524 |
| 12 | 07/21/95 | 560.525 |

Transactions otherwise prohibited by this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 560.801 of subpart H.

The following sections contained in part 560 are removed and reserved and are no longer in force: §§ 560.202, 560.302, 560.309, 560.403, 560.404, 560.405, 560.409, 560.503, 560.504, 560.511, and 560.514.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties concerning any rule or other public document.

The collection of information requirements contained in §§ 560.601, 560.602, and 560.801 have been previously approved by the Office of Management and Budget (''OMB'') and assigned control number 1505–0106. Because the Regulations are being issued without prior notice and public procedures pursuant to the Administrative Procedure Act, the collection of information requirements contained in §§ 560.603 and 560.704 are being submitted to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505––0106), Washington, DC 20503, with copies to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W.––Annex, Washington, DC 20220. Notice of OMB action on these requests will be published in the **Federal Register.**

This collection of information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty, and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are individuals and business organizations.

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

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

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1 to 4.

**List of Subjects in 31 CFR Part 560**

Administrative practice and procedure, Agricultural commodities, Banking and finance, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Transportation.

For the reasons set forth in the preamble, 31 CFR part 560 is revised to read as follows:

## PART 560—IRANIAN TRANSACTIONS REGULATIONS

**Authority:** 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 2349aa–9; 3 U.S.C. 301; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, March 17, 1995; E.O. 12959, 60 FR 24757, May 9, 1995.


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Sec.
560.101 Relation of this part to other laws and regulations.

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560.504 [Reserved]
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560.517 Exportation of services: Iranian accounts at United States depository institutions.
560.518 Transactions in Iranian–origin and Iranian Government property.
560.519 Policy governing news organization offices.
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560.901 Paperwork Reduction Act notice.


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

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

(a) This part is separate from, and independent of, the other parts of this chapter, including part 535, ''Iranian Assets Control Regulations.'' No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulations authorizes any transaction prohibited by this part.

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

## Subpart B—Prohibitions

### § 560.201 Prohibited importation of goods and services from Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin, other than Iranian–origin publications and materials imported for news publications or news broadcast dissemination, is prohibited.

### § 560.202 [Reserved]

### § 560.203 Evasions; attempts.

Any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions contained in this part is hereby prohibited.

### § 560.204 Prohibited exportation of goods, technology, and services to Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services is prohibited.

**§ 560.205 Prohibited reexportation of goods and technology to Iran.**

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the reexportation to Iran or the Government of Iran of any goods or technology exported from the United States, the exportation of which to Iran was subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995, is prohibited, unless the reexportation is of goods that have been substantially transformed outside the United States, or incorporated into another product outside the United States and constitute less than 10 percent by value of that product exported from a third country.

**§ 560.206 Prohibited transactions related to Iranian–origin goods or services.**

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran is prohibited.

**§ 560.207 Prohibited investment.**

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any new investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran is prohibited.

**§ 560.208 Prohibited approval or facilitation.**

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the approval or facilitation by a United States person of the entry into or performance by an entity owned or controlled by a United States person of a transaction or contract prohibited as to United States persons by §§ 560.205, 560.206, and 560.207, or relating to the financing of activities prohibited as to United States persons by those sections, or of a guaranty of another person's performance of such transaction or contract, is prohibited.

**§ 560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.**

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to March 16, 1995, the following are prohibited:

(a) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of:

(1) A contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or

(2) A guaranty of another person's performance under such contract; or

(b) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of

(1) A contract for the financing of the development of petroleum resources located in Iran, or

(2) A guaranty of another person's performance under such a contract.

**§ 560.210 Exempt transactions.**

(a) *Personal communications.* The prohibitions of §§ 560.204 and 560.206 do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Humanitarian donations.* The prohibitions of §§ 560.204 and 560.206 do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

(c) *Information and informational materials.*

(1) The prohibitions of §§ 560.204 and 560.206 do not apply to the exportation from the United States to Iran of information and informational materials, as defined in § 560.315, whether commercial or otherwise, regardless of format or medium of transmission, or any transaction of common carriers incident to such exportation.

(2) Paragraph (c)(1) of this section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or the provision of marketing and business consulting services by a United States person. Such prohibited transactions include, without limitation, payment of advances for information or informational materials not yet created and completed, and provision of services to market, produce or co–produce, create or assist in the creation of information or informational materials.

(3) Paragraph (c)(1) does not authorize transactions incident to the exportation of restricted technical data as defined in part 779 of the Export Administration Regulations, 15 CFR part 779, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to Iran is prohibited, as provided in § 560.204.

(d) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages. This exemption extends to transactions with Iranian carriers and those involving group tours and payments in Iran made with cash or traveler's checks for transactions incident to personal travel. The use of currency drafts, charge, debit, or credit cards is not permitted.

(e) *Letters of Credit.* Letters of credit and other financing agreements with respect to trade contracts in force as of May 6, 1995, may be performed pursuant to their terms with respect to underlying trade transactions occurring prior to 12:01 a.m. EDT, June 6, 1995. See § 560.413.

## Subpart C—General Definitions

**§ 560.301 Effective date.**

The term ''effective date'' means:

(a) 12:01 p.m., Eastern Standard Time, October 29, 1987, for all prohibitions set forth in § 560.201.

(b) 12:01 a.m., Eastern Daylight Time, June 6, 1995, for all prohibitions set forth in §§ 560.204, 560.205, and 560.206 with respect to trade transactions based on contracts in force as of May 6, 1995, and which were authorized pursuant to federal regulations in force immediately prior to May 6, 1995.

(c) 12:01 a.m., Eastern Standard Time, March 16, 1995, for all prohibitions set forth in § 560.209 and the prohibitions set forth in § 560.203 as they apply to the prohibitions set forth in § 560.209.

(d) 12:01 a.m., Eastern Daylight Time, May 7, 1995, for all other prohibitions contained in this part.

**§ 560.302 [Reserved]**

**§ 560.303 Iran; Iranian.**

The term ''Iran'' means the territory of Iran, and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights or jurisdiction, provided that the

Government of Iran exercises partial or total *de facto* control over the area or derives a benefit from economic activity in the area pursuant to an international agreement. The term ''Iranian'' means pertaining to Iran as defined in this section.

**§ 560.304 Government of Iran.**

The term ''Government of Iran'' includes:

(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing;

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

(d) Any person or entity designated by the Secretary of the Treasury as included within paragraphs (a) through (c) of this section.

**§ 560.305 Person; entity.**

(a) The term ''person'' means an individual or entity.

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation or other organization.

**§ 560.306 Iranian–origin goods and services.**

(a) The term ''goods or services of Iranian origin'' includes:

(1) Goods grown, produced, manufactured, extracted, or processed in Iran;

(2) Goods which have entered into Iranian commerce; and

(3) Services performed in Iran or by the Government of Iran, as defined in § 560.304.

(b) The term ''services of Iranian origin'' does not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Iran;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States; or

(3) Services provided in the United States by an Iranian national resident in the United States.

**§ 560.307 United States.**

The term ''United States'' means the United States, including its territories and possessions.

**§ 560.308 Importation.**

The term ''importation'' means the bringing of any goods into the United States, except that in the case of goods transported by vessel, ''importation'' means the bringing of any goods into the United States with the intent to unlade them.

**§ 560.309 [Reserved]**

**§ 560.310 License.**

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

**§ 560.311 General license.**

The term ''general license'' means any license or authorization the terms of which are set forth in this part.

**§ 560.312 Specific license.**

The term ''specific license'' means any license or authorization not set forth in this part but issued pursuant to this part.

**§ 560.313 Entity owned or controlled by the Government of Iran.**

The term ''entity owned or controlled by the Government of Iran'' includes any corporation, partnership, association, or other entity in which the Government of Iran owns a majority or controlling interest, and any entity which is otherwise controlled by that government.

**§ 560.314 United States person.**

The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

**§ 560.315 Information or informational materials.**

(a) The term ''information'' or ''informational materials'' includes, without limitation:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered ''information'' or ''informational materials'', artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term ''information'' and ''informational materials'' with respect to United States exports does not include items:

(1) That were, as of April 30, 1994, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, including ''software'' that is not ''publicly available'' as these terms are defined in 15 CFR parts 779 and 799.1; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

**§ 560.316 New investment.**

The term ''new investment'' means a transaction after 12:01 EDT, May 7, 1995, that constitutes:

(a) A commitment or contribution of funds or other assets; or

(b) A loan or other extension of credit, as defined in § 560.317.

**§ 560.317 Credits or loans.**

The term ''credits'' or ''loans'' means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including but not limited to: overdrafts; currency swaps; purchases of debt securities issued by the Government of Iran; purchases of a loan made by another person; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to a prohibited borrower or prohibited recipient; the issuance of standby letters of credit; and drawdowns on existing lines of credit.

**§ 560.318 Technology.**

For purposes of §§ 560.204 and 560.205, the term ''technology'' includes technical data or other information subject to the Export Administration Regulations, 15 CFR parts 768–799.

**§ 560.319 United States depository institution.**

The term ''United States depository institution'' means:

(a) Any entity organized under the laws of any jurisdiction within the United States (including its foreign branches), and

(b) Any agency, office, or branch located in the United States of a foreign entity; that is engaged primarily in the business of banking, including accepting deposits and making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, or procuring purchasers and sellers thereof, as principal or agent. The term includes, among others, banks, savings banks, savings associations, mortgage companies, credit unions, and trust companies and United States holding companies.

**§ 560.320 Iranian accounts.**

The term ''Iranian accounts'' means accounts of persons located in Iran or of

the Government of Iran maintained on the books of a United States depository institution.

## Subpart D—Interpretations

### § 560.401 Reference to amended sections.

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

### § 560.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

### § 560.403 [Reserved]

### § 560.404 [Reserved]

### § 560.405 [Reserved]

### § 560.406 Transshipments prohibited.

(a) The prohibitions in § 560.201 apply to the importation into the United States, for transshipment or transit, of Iranian–origin goods which are intended or destined for third countries.

(b) The prohibitions in § 560.204 apply to the exportation from the United States, for transshipment or transit, of goods which are intended or destined for Iran.

(c) The prohibitions in § 560.205 apply to the reexportation of goods described in that section, for transshipment or transit, which are intended or destined for Iran.

(d) The prohibitions in § 560.206 apply to any transaction relating to the transshipment of goods of Iranian origin or owned or controlled by the Government of Iran through any country.

### § 560.407 Transactions related to Iranian–origin goods.

(a) Importation into the United States from third countries of goods containing Iranian–origin raw materials or components is not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

(b) Transactions relating to Iranian–origin goods that have not been incorporated into manufactured products or substantially transformed in a third country are prohibited.

(c) Transactions relating to goods containing Iranian–origin raw materials or components are not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

### § 560.408 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in § 560.201 apply to importation into a bonded warehouse or a foreign trade zone of the United States. However, § 560.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of Iranian–origin goods imported into a bonded warehouse or a foreign trade zone prior to October 29, 1987.

### § 560.409 [Reserved]

### § 560.410 Exportation of services.

(a) The prohibition on the exportation of services from the United States contained in § 560.204 applies only to services performed on behalf of a person in Iran or the Government of Iran or where the benefit of such services is otherwise received in Iran, if such services are performed:

(1) In the United States, or

(2) Outside the United States by an individual United States person ordinarily resident in the United States, or

(3) Outside the United States by an overseas branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Iran is presumed to be received in Iran.

(c) Services provided in the United States or by a United States person to a non–Iranian carrier transporting passengers or goods to or from Iran are not considered to be exported to Iran.

(d) Services provided in a third country by a United States person ordinarily resident outside the United States are not considered to be exported from the United States.

### § 560.411 Offshore transactions in Iranian–origin goods and services.

The prohibitions contained in § 560.206 apply to, among other things, transactions by United States persons in locations outside the United States with respect to goods or services which the United States person knows, or has reason to know, are of Iranian origin or owned or controlled by the Government of Iran, including:

(a) Importing into or exporting from such locations; and

(b) Purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, or transforming, or brokering any of the foregoing.

### § 560.412 Extensions of credits or loans to Iran.

(a) The prohibitions contained in § 560.207 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of May 6, 1995.

(b) The prohibitions contained in § 560.209 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of March 15, 1995.

(c) The prohibitions contained in §§ 560.207 and 560.209 apply, among other things, to credits or loans in any currency.

### § 560.413 Letter of credit payments by Iranian banks in the United States.

(a) For purposes of the exemption in § 560.210(e), payment of letters of credit and other financing agreements according to their terms includes, in the case of payments made by an Iranian bank's branch or agency located in the United States, payments that such branch or agency is:

(1) Legally obligated to make pursuant to the terms of letters of credit and other financing agreements relating to pre–May 7, 1995 trade contracts; or

(2) Licensed to make by the Office of Foreign Assets Control with respect to pre–May 7, 1995 trade contracts.

(b) Payments that are not binding legal obligations of an Iranian bank's branch or agency pursuant to the terms of the letter of credit or other financing agreement are not covered by this exemption.

### § 560.414 Exports to third countries; reexports.

(a) The prohibitions contained in § 560.205 do not apply to the reexportation to Iran by a person who is not a United States person of any item described in that section which was exported from the United States prior to 12:01 a.m. EDT, May 7, 1995, and was not the property of a United States person as of 12:01 a.m. EDT, May 7, 1995, if the reexportation to Iran of such item was not subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995.

(b) United States persons are prohibited as of 12:01 a.m. EDT, May 7,

1995, from reexporting any item subject to the prohibitions contained in § 560.205 regardless of when the item was exported from the United States. United States persons are prohibited from approving or facilitating any reexport by an entity owned or controlled by a United States person of any item subject to the prohibitions of § 560.205 of this part regardless of when the item was exported from the United States.

(c) Effective 12:01 a.m. EDT May 7, 1995, the exportation from the United States to any destination of any item that was subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995, is subject to the condition that the reexportation to Iran requires a specific license, except as otherwise authorized by this part.

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

### § 560.501 Effect of license or authorization.

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

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

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

### § 560.502 Exclusion from licenses and authorizations.

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

### § 560.503 [Reserved]

### § 560.504 [Reserved]

### § 560.505 Certain services relating to participation in various events authorized.

The importation of Iranian–origin services into the United States is authorized where such services are performed in the United States by an Iranian national who enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

### § 560.506 Importation and exportation of certain gifts authorized.

The importation into the United States of Iranian–origin goods, and the exportation from the United States of goods, is authorized for goods sent as gifts to persons provided that the value of the gift is not more than $100.

### § 560.507 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from Iran are authorized to import into the United States Iranian–origin accompanied baggage normally incident to travel.

(b) Persons leaving the United States for Iran are authorized to export from the United States accompanied baggage normally incident to travel.

(c) This authorization applies to accompanied baggage that includes only articles that are necessary for personal use incident to travel, not intended for any other person or for sale, and are not otherwise prohibited from importation or exportation under applicable United States laws.

### § 560.508 Telecommunications and mail transactions authorized.

All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Iran are authorized. For purposes of this section, the term ''mail'' includes parcels only to the extent the parcels contain goods exempted from the prohibitions contained in this part or otherwise eligible for importation from or exportation to Iran under a general or specific license.

### § 560.509 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Iran are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) Nothing in this section affects obligations under any other provision of law.

### § 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.

(a) Except as otherwise authorized, specific licenses may be issued on a case–by–case basis to authorize transactions in connection with awards, decisions or orders of the Iran–United States Claims Tribunal in The Hague, the International Court of Justice, or other international tribunals (collectively, ''tribunals''); agreements settling claims brought before tribunals; and awards, orders, or decisions of an administrative, judicial or arbitral proceeding in the United States or abroad, where the proceeding involves the enforcement of awards, decisions or orders of tribunals, or is contemplated under an international agreement, or involves claims arising before 12:01 a.m. EDT, May 7, 1995, that resolve disputes between the Government of Iran and the United States or United States nationals, including the following transactions:

(1) Importation into the United States of, or any transaction related to, goods and services of Iranian origin or owned or controlled by the Government of Iran;

(2) Exportation or reexportation to Iran or the Government of Iran of any goods, technology, or services, except to the extent that such exportation or reexportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a

license by that agency would be prohibited by law;

(3) Financial transactions related to the resolution of disputes at tribunals, including transactions related to the funding of proceedings or of accounts related to proceedings or to a tribunal; participation, representation, or testimony before a tribunal; and the payment of awards of a tribunal; and

(4) Other transactions otherwise prohibited by this part which are necessary to permit implementation of the foregoing awards, decisions, orders, or agreements.

(b) Specific licenses may be issued on a case–by–case basis to authorize payment of costs related to the storage or maintenance of goods in which the Government of Iran has title, and to authorize the transfer of title to such goods, provided that such goods are in the United States and that such goods are the subject of a proceeding pending before a tribunal.

(c)(1) All transactions are authorized with respect to the importation of Iranian–origin goods and services necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals.

(2) Specific licenses may be issued on a case–by–case basis to authorize the exportation to Iran or the Government of Iran of goods, and of services not otherwise authorized by § 560.525, necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, except to the extent that the exportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law.

(3) Representation of United States persons or of third country persons in legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, against Iran or the Government of Iran is not prohibited by this part. The exportation of certain legal services to a person in Iran or the Government of Iran is authorized in § 560.525.

(d) The following are authorized:

(1) All transactions related to payment of awards of the Iran–United States Claims Tribunal in The Hague against Iran out of the Security Account provided for in paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981.

(2) All transactions necessary to the payment of awards in a legal proceeding to which the United States Government is a party, or to payments pursuant to settlement agreements entered into by the United States Government in such a legal proceeding.

**§ 560.511 [Reserved]**

**§ 560.512 Iranian Government missions in the United States.**

(a) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the missions of the Government of Iran to international organizations in the United States, and Iranians admitted to the United States under section 101(a)(15)(G) of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1101(a)(15)(G), are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use of personnel admitted to the United States under INA section 101(a)(15)(G), and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(b) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the Iranian Interests Section, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) All transactions ordinarily incident to the provision of goods or services in the United States to the employees of Iranian missions to international organizations in the United States, and to employees of the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that the transaction is not otherwise prohibited by law.

**§ 560.513 Importation of Iranian–origin oil.**

(a) Specific licenses will be issued on a case–by–case basis to permit the importation of Iranian–origin oil in connection with the resolution or settlement of cases before the Iran–United States Claims Tribunal in The Hague, established pursuant to the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran of January 19, 1981, or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

(b) License applications submitted pursuant to this section must contain the importer's certification that the oil is of Iranian origin with all relevant supporting documentation, including specification of the production site at which the oil was extracted, and that the sale or transfer of the oil is by or for the account of the Government of Iran. Licenses will not be issued for importations of Iranian–origin oil which is not sold or transferred by or for the account of the Government of Iran. In cases where the oil is being imported either in whole or in part in resolution or settlement of a case pending before the Tribunal, applicants are required to identify the case and submit a copy of the settlement agreement and the Award on Agreed Terms issued by the Tribunal. In cases where any proceeds are generated for the account of the Government of Iran from the importation of Iranian–origin oil, the importer must demonstrate that irrevocable arrangements are in place that will ensure that the proceeds will be deposited in the Tribunal's Security Account.

**§ 560.514 [Reserved]**

**§ 560.515 30–day delayed effective date for pre–May 7, 1995 trade contracts involving Iran.**

(a) All transactions necessary to complete performance of a trade contract entered into prior to May 7, 1995, and involving Iran (a ''pre–existing trade contract''), including the exportation of goods, services (including financial services), or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or performance under a pre–existing trade contract for transactions in Iranian–origin or Government of Iran owned or controlled goods or services not involving importation into the United States, are authorized without specific licensing by the Office of Foreign Assets Control if the conditions in paragraph (a)(1) or (a)(2) are met:

(1) If the pre–existing trade contract is for exportation of goods or technology from the United States that was

authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, the goods or technology must be exported from the United States prior to 12:01 a.m. EDT, June 6, 1995, and all other activity by U.S. persons that is necessary and incidental to the performance of the pre–existing trade contract (other than payment under a financing contract) must be completed prior to 12:01 a.m. EDT, August 6, 1995; or

(2) If the pre–existing trade contract is for:

(i) The exportation of services from the United States and benefitting a person in Iran or the Government of Iran; or

(ii) The reexportation of goods or technology to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or

(iii) Transactions relating to goods or services of Iranian origin or owned or controlled by the Government of Iran other than transactions relating to importation into the United States of such goods or services, all obligations under the pre–existing trade contract (other than payment under a financing contract) must be fully completed prior to 12:01 a.m. EDT, June 6, 1995.

(b) In order to complete performance of a pre–existing trade contract, the arrangement or renegotiation of contracts for transactions necessary and incidental to performance of the pre–existing trade contract is authorized. Such incidental transactions may include, for example, financing, shipping and insurance arrangements. Amendments to a pre–existing trade contract for the purpose of accelerating a previously–specified delivery schedule under a contract for a fixed quantity or value of goods, technology or services, or curtailing or canceling required performance, are authorized without specific licensing. Any other alteration of the trade contract must be specifically licensed by the Office of Foreign Assets Control.

(c) The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

(d) No U.S. person may change its policies or operating procedures in order to enable a foreign entity owned or controlled by U.S. persons to enter into a transaction that could not be entered into directly by a U.S. person located in the United States pursuant to the prohibitions contained in this part.

**§ 560.516 Payment and United States dollar clearing transactions involving Iran.**

(a) United States depository institutions are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account:

(1) The transfer is by order of a foreign bank which is not an Iranian entity from its own account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) for a second foreign bank which is not an Iranian entity. For purposes of this section ''foreign bank'' includes a foreign subsidiary, but not a foreign branch of a domestic bank;

(2) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to this part;

(3) The transfer arises from an underlying transaction that is not prohibited or is exempted from regulation pursuant to Section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel–related remittance, or payment for the shipment of a donation of articles to relieve human suffering or a third country transaction not involving a United States person nor otherwise prohibited by this part; or

(4) The transfer is a non–commercial remittance to or from Iran, such as a family remittance not related to a family–owned enterprise.

(b) Before a United States depository institution initiates a payment subject to the prohibitions contained in this part on behalf of any customer, or credits a transfer subject to such prohibitions to the account on its books of the ultimate beneficiary, the U.S. depository institution must determine that the transfer is not prohibited by this part.

(c) Pursuant to the prohibitions contained in § 560.208, a United States depository institution may not make transfers to or for the benefit of a foreign-organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. depository institution.

(d) This section does not authorize transactions with respect to property blocked pursuant to part 535.

**§ 560.517 Exportation of services: Iranian accounts at United States depository institutions.**

(a) United States depository institutions are prohibited from performing services with respect to Iranian accounts, as defined in § 560.320, at the instruction of the Government of Iran or persons located in Iran, except that United States depository institutions are authorized to provide and be compensated for services and incidental transactions with respect to:

(1) The maintenance of Iranian accounts, including the payment of interest and the debiting of service charges;

(2) The processing of transfers arising from underlying transactions that are exempted from regulation pursuant to section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel–related remittance, or payment for the shipment of a donation of articles to relieve human suffering; and

(3) At the request of the account party, the closing of Iranian accounts and the lump sum transfer only to the account party of all remaining funds and other assets in the account.

(b) Specific licenses may be issued with respect to the operation of Iranian accounts that constitute accounts of:

(1) Foreign government missions and their personnel in Iran; or

(2) Missions of the Government of Iran in the United States.

**§ 560.518 Transactions in Iranian–origin and Iranian Government property.**

(a) Except for transactions involving the Government of Iran, all domestic transactions with respect to Iranian–origin goods located in the United States are authorized, provided that this paragraph (a) does not affect the status of property blocked pursuant to part 535 or detained or seized, or subject to detention or seizure, pursuant to this part.

(b) All transactions necessary and incidental to a United States person's sale or other disposition of goods or services of Iranian origin or owned or controlled by the Government of Iran that are located or to be performed outside the United States and were acquired by that United States person in transactions not prohibited by part 535 or this part are authorized, provided:

(1) The sale or other disposition does not result in the importation of such goods or services into the United States, and

(2) The sale or other disposition is completed no later than 12:01 a.m. EDT, August 6, 1995.

(c) Except as provided in paragraphs (a) and (b) of this section, United States persons may not deal in goods or services of Iranian origin or owned or controlled by the Government of Iran, except that the following transactions are authorized:

(1) Transactions by a United States person with third–country nationals incidental to the storage and maintenance in third countries of Iranian–origin goods owned prior to May 7, 1995, by that United States person or acquired thereafter by that United States person consistent with the provisions of this part;

(2) Exportation of Iranian–origin household and personal effects from the United States incident to the relocation of United States persons outside the United States; and

(3) Purchase for personal use or consumption in Iran of Iranian–origin goods or services.

(d) In addition to transactions authorized by paragraph (c)(1) of this section, a United States person is authorized after 12:01 a.m. EDT, May 7, 1995, to use or dispose of Iranian–origin household and personal effects that are located outside the United States and that have been acquired by the United States person in transactions not prohibited by part 535 or this part.

**§ 560.519 Policy governing news organization offices.**

(a) Specific licenses may be issued on a case–by–case basis authorizing transactions necessary for the establishment and operation of news bureaus in Iran by United States organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that may be authorized include but are not limited to those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring support staff;

(3) Purchasing Iranian–origin goods for use in the operation of the office; and

(4) Paying fees related to the operation of the office in Iran.

(c) Specific licenses may be issued on a case–by–case basis authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Iranian organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to such specific licenses should be referenced in all import and export documents and in all funds transfers and other banking transactions through banking institutions organized or located in the United States in connection with the licensed transactions to avoid disruption of the trade and financial transactions.

**§ 560.520 Exportation of agricultural commodities.**

(a) All transactions by United States persons in connection with the exportation from the United States to Iran of any agricultural commodity under an export sales contract are authorized, provided:

(1) Such contract was entered into prior to 12:01 a.m. EDT, May 7, 1995; and

(2) The terms of such contract require delivery of the commodity prior to February 2, 1996.

(b) The performance of letters of credit and other financing agreements with respect to exports authorized by this section is authorized pursuant to their terms.

(c) For purposes of this section, the term ''agricultural commodity'' means feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products, and oilseeds (including vegetable oil).

(d) Specific licenses may be granted on a case–by–case basis for transactions by United States persons in connection with the exportation of other agricultural articles from the United States to Iran that do not fall within the definition of ''agricultural commodity'' contained in paragraph (c) of this section, provided such exportation is pursuant to an export sales contract and the conditions contained in paragraphs (a)(1) and (a)(2) of this section are met.

**§ 560.521 Diplomatic pouches.**

All transactions in connection with the importation into the United States from Iran, or the exportation from the United States to Iran, of diplomatic pouches and their contents are authorized.

**§ 560.522 Allowable payments for overflights of Iranian airspace.**

Payments to Iran of charges for services rendered by the Government of Iran in connection with the overflight of Iran or emergency landing in Iran of aircraft owned by a United States person or registered in the United States are authorized.

**§ 560.523 Importation of information and informational materials.**

(a) In addition to transactions relating to information or informational materials that are exempted from regulation under § 560.210, the following are authorized:

(1) The importation of information and informational materials of Iranian origin from any location, whether commercial or otherwise, regardless of format or medium of transmission; and

(2) All financial and other transactions related to the importation of information and informational materials.

(b) Specific licenses may be issued on a case–by–case basis for the exportation of equipment necessary for the establishment of news wire feeds or other transmissions of information or informational materials.

**§ 560.524 Household goods and personal effects.**

(a) The exportation from the United States to Iran of household and personal effects, including baggage and articles for family use, of persons departing the United States to relocate in Iran is authorized provided the articles included in such effects have been actually used by such persons or by family members accompanying them, are not intended for any other person or for sale, and are not otherwise prohibited from exportation. See also, § 560.518(c)(2).

(b) The importation of Iranian–origin household and personal effects, including baggage and articles for family use, of persons arriving in the United States is authorized; to qualify, articles included in such effects must have been actually used abroad by such persons or by other family members arriving from the same foreign household, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation.

**§ 560.525 Exportation of certain legal services.**

(a) The provision of the following legal services to the Government of Iran or to a person in Iran, and receipt of payment therefor, are authorized:

(1) Provision of legal advice and counselling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation when a person in Iran or the Government of Iran has been named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation of domestic United States legal, arbitration, or administrative proceedings in defense of

property interests of the Government of Iran that were in existence prior to May 7, 1995, or acquired thereafter in a transaction not inconsistent with the prohibitions contained in this part;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against Iran;

(5) Initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before international tribunals (including the Iran–United States Claims Tribunal in The Hague and the International Court of Justice):

(i) To resolve disputes between the Government of Iran and the United States or a United States national;

(ii) Where the proceeding is contemplated under an international agreement; or

(iii) Where the proceeding involves the enforcement of awards, decisions, or orders resulting from legal proceedings within the scope of paragraph (a)(5)(i) or (a)(5)(ii) of this section, provided that any transaction, unrelated to the provision of legal services or the payment therefor, that is necessary or related to the execution of an award, decision or order resulting from such legal proceeding, or otherwise necessary for the conduct of such proceeding, and which would otherwise be prohibited by this part requires a specific license in accordance with §§ 560.510 and 560.801;

(6) Provision of legal advice and counselling in connection with settlement or other resolution of matters described in paragraph (a)(5) of this section; and

(7) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(b) The provision of any other legal services to a person in Iran or the Government of Iran, not otherwise authorized in or exempted by this part, requires the issuance of a specific license.

### § 560.526 Commodities trading and related transactions.

(a) *Trading in Iranian–origin commodities*. With respect to § 560.206, specific licenses may be issued on a case–by–case basis to authorize certain commodities trading by a United States person in Iranian–origin goods, or transactions incidental to such trading, where:

(1) No party to the transaction with the United States person is a person in Iran or the Government of Iran, and

(2) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be of Iranian origin or would be owned or controlled by the Government of Iran.

(b) *Trading in commodities destined for Iran or the Government of Iran*. With respect to § 560.204, specific licenses may be issued on a case–by–case basis to authorize certain trading by United States persons in commodities of U.S. or third–country origin destined for Iran or the Government of Iran, or transactions incidental to such trading, where:

(1) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be for delivery to Iran or to the Government of Iran;

(2) The United States person did not contract with a person in Iran or the Government of Iran; and

(3) The United States person did not initiate the nomination of the commodity's destination as Iran or the Government of Iran.

### § 560.527 Rescheduling existing loans.

Specific licenses may be issued on a case–by–case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates, in connection therewith, provided that no new funds or credits are thereby transferred or extended to Iran or the Government of Iran.

### § 560.528 Aircraft safety.

Specific licenses may be issued on a case–by–case basis for the exportation and reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.–origin commercial passenger aircraft.

## Subpart F—Reports

### § 560.601 Required records.

Every person engaging in any transaction subject to the provisions of this part must keep a full and accurate record of each such transaction in which that person engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record must be available for examination for at least 2 years after the date of such transaction.

### § 560.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

### § 560.603 Reports on oil transactions engaged in by foreign affiliates.

(a) *Requirement for reports*. Reports are required to be filed in the manner prescribed in this section with respect to all reportable transactions, as defined in paragraph (f) of this section, engaged in by the foreign affiliates of a United States person. Reports are due within fifteen days after the end of each calendar quarter. The first report must cover the period beginning June 6, 1995, and ending September 30, 1995. Reports must be filed covering each three–month period thereafter.

(b) *Who must report*. Reports are required to be filed by any United States person whose foreign affiliate engaged in a reportable transaction during the prior calendar quarter. A single United States entity within a consolidated or affiliated group may be designated to report on each foreign affiliate of the United States members of the group. Such centralized reporting may be done by the United States person who owns or controls, or has been delegated authority to file on behalf of, the remaining United States persons in the group.

(c) *What must be reported*.

(1) Part I of the report must include the following information with respect to United States persons with a foreign affiliate:

(i) Its name and address;

(ii) Its principal place of business;

(iii) For entities, its state of incorporation; and

(iv) The name, corporate title, and telephone number of the individual to contact concerning the report.

(2) Part II of the report must include the following information with respect to the foreign affiliate:

(i) Its name and address;

(ii) The country of its incorporation and its principal place of business;

(iii) Its entity type (e.g., corporation, partnership, limited liability company, etc.);

(iv) Its relationship to the reporting United States person, including percentage of direct and indirect ownership;

(v) The name, title, and nationality of principal corporate officers; and

(vi) A description of the manner and degree to which the United States person exercises control over the foreign affiliate's oil–related transactions. The description must include any written or verbal directions or instructions issued by the United States person to the foreign affiliate concerning such transactions, any requirements for prior approval by the United States person concerning such transactions, and the frequency of, and the nature of information contained in, written or verbal reports by the foreign affiliate to the United States person in which these transactions are described, aggregated, or summarized.

(3) Part III of the report must include the following information with respect to each reportable transaction (a separate part III must be submitted for each reportable transaction):

(i) The nature of transaction (e.g., purchase, sale, swap);

(ii) A description of the product, technology, or service involved;

(iii) The name of the Iranian or third country party involved in the transaction;

(iv) The currency and amount of the transaction (and corresponding United States dollar value of the transaction, if not conducted in United States dollars);

(v) The division or branch of the foreign affiliate involved in the negotiating and executing of the transaction;

(vi) The name, corporate title, and nationality of each employee engaged in the transaction; and

(vii) How the transaction is reflected in the report or reports as required by paragraph (c)(2)(vi) of this section. If the transaction is aggregated with other transactions, an explanation must be provided for all the components in the aggregate report.

(d) *Where to report*. Reports must be filed with the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. Reports may be submitted by facsimile transmission at 202–622–1657. A copy must be retained for the reporter's records.

(e) *Whom to contact*. Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, telephone: 202–622–2440.

(f) *Definitions*. For the purposes of this section:

(1) The term ''foreign affiliate'' means a person or entity (other than a United States person as defined in § 560.314) which is organized or located outside of the United States, and which is owned or controlled by a United States person or persons; and

(2) The term ''reportable transaction'' includes any purchase, sale, or swap, or the provision of services related to such purchase, sale, or swap, such as financing, lifting, transporting, insuring, processing, transforming, or incorporating, related to:

(i) Iranian–origin crude oil or natural gas; or

(ii) Crude oil or natural gas and involving Iran or the Government of Iran.

## Subpart G—Penalties

### § 560.701 Penalties.

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

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

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

### § 560.702 Detention of shipments.

Import shipments into the United States of Iranian–origin goods in violation of § 560.201 and export shipments from the United States of goods destined for Iran in violation of §§ 560.202 or 560.204 shall be detained. No such import, export, or reexport will be permitted to proceed, except as specifically authorized by the Secretary of the Treasury. Unless licensed, such shipments are subject to penalty or seizure and forfeiture action, under the Customs laws or other applicable provisions of law, depending on the circumstances.

### § 560.703 Prepenalty notice.

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

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

(2) *Right to make presentations*. The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary

penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

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

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

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

**§ 560.705 Penalty notice.**

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

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

**§ 560.706 Referral for administrative collection measures or to United States Department of Justice.**

In the event that the person named does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

## Subpart H—Procedures

**§ 560.801 Licensing.**

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

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

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

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

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

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

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

(c) *Address*. License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to the Director, at the following address: Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW––Annex, Washington, DC 20220.

**§ 560.802 Decisions.**

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

**§ 560.803 Amendment, modification, or revocation.**

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

**§ 560.804 Rulemaking.**

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

(b) Any interested person may petition the Director of the Office of

Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

**§ 560.805 Delegation by the Secretary of the Treasury.**

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12613, Executive Order 12957, Executive Order 12959, and any further Executive orders relating to the national emergency declared in Executive Order 12957 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

**§ 560.806 Customs procedures: Goods specified in § 560.201.**

(a) With respect to goods specified in § 560.201, and not otherwise licensed or excepted from the scope of that section, appropriate Customs officers shall not accept or allow any:

(1) Entry for consumption or warehouse (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Admission, entry, transfer or withdrawal to or from a foreign trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign trade zone.

(b) Customs officers may accept or allow the importation of Iranian–origin goods under the procedures listed in paragraph (a) if:

(1) A specific license pursuant to this part is presented; or

(2) Instructions authorizing the transaction are received from the Office of Foreign Assets Control.

(c) Whenever a specific license is presented to an appropriate Customs officer in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved must be filed with the appropriate Customs officers at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, must bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license must be presented to the appropriate Customs officers in respect of each such transaction and must bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation must be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal, or other transaction with regard to the merchandise, the appropriate Customs officer, or other authorized Customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the appropriate Customs officer to the Office of Foreign Assets Control.

(d) If it is unclear whether an entry, withdrawal or other action affected by this section requires a specific license from the Office of Foreign Assets Control, the appropriate Customs officer may withhold any action thereon and shall advise such person to communicate directly with the Office of Foreign Assets Control to request that instructions be sent to the Customs officer to authorize him to take action with regard thereto.

**§ 560.807 Rules governing availability of information.**

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

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with the Iranian Transactions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW––Annex, Washington, DC 20220 or by calling 202/622–2480.

## Subpart I—Paperwork Reduction Act

**§ 560.901 Paperwork Reduction Act notice.**

The information collection requirements in §§ 560.601, 560.602, and 560.801 have been approved by the Office of Management and Budget and assigned control number 1505–0106.

Dated: August 23, 1995.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: August 28, 1995.

**John P. Simpson,**

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

[FR Doc. 95–22387 Filed 9–6–95; 5:01 pm]

BILLING CODE 4810–25–F

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 137–1–7051a; FRL–5262–2]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Mojave Desert Air Quality Management District (MDAQMD) for two source categories that emit volatile organic compounds (VOC): Asphalt Air Blowing and Vacuum Producing Devices or Systems. The MDAQMD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these negative declarations serves as a final determination that the finding of nonsubmittal for these source categories has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the

CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

**SUPPLEMENTARY INFORMATION:**

## Applicability

The revisions being approved as additional information for the California SIP include two negative declarations from the MDAQMD regarding the following source categories: (1) Asphalt Air Blowing and (2) Vacuum Producing Devices or Systems. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on December 20, 1994 and December 29, 1994, respectively.

## Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the portions of San Bernardino County Air Pollution Control District[1] within the Southeast Desert Air Quality Management Area (AQMA). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that nonattainment areas submit reasonably available control technology (RACT) rules for all major sources of VOC and for all VOC sources covered by a Control Techniques Guideline document by November 15, 1992.[2]

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The Southeast Desert AQMA is classified as severe;[3] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.

The negative declaration for Asphalt Air Blowing was adopted on October 26, 1994 and submitted by the State of California on December 20, 1994 and the negative declaration for Vacuum Producing Devices or Systems was adopted on December 21, 1994 and submitted by the State of California for the MDAQMD on December 29, 1994. The submitted negative declarations were found to be complete on January 3, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being finalized for approval into the SIP as additional information. This notice addresses EPA's direct-final action for the MDAQMD negative declarations for Asphalt Air Blowing and Vacuum Producing Devices or Systems. The submitted negative declarations certify that there are no VOC sources in these source categories located inside MDAQMD's portion of the Southeast Desert AQMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of MDAQMD's effort to meet the requirements of section 182(b)(2) of the CAA.

## EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In Board Resolution No. 94–26, the District rescinded Rule 470, Asphalt Air Blowing. Asphalt Air Blowing Operations are typically conducted at refineries, and there are no refineries located in MDAQMD. MDAQMD's emission inventory has also revealed that there are no sources of VOC emissions from this source category. In Board Resolution No. 94–38, the District rescinded Rule 465, Vacuum Producing Devices or Systems and certified that MDAQMD's emission inventory has revealed that there are no sources of VOC emissions from this source category located within the MDAQMD's jurisdiction.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. MDAQMD's negative declarations for Asphalt Air Blowing and Vacuum Producing Devices or Systems are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. Therefore, if this direct final action is not withdrawn, on November 13, 1995, any FIP clock is stopped.

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

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial

[1] On July 1, 1993, the San Bernardino County Air Pollution Control District was renamed the Mojave Desert Air Quality Management District.

[2] Mojave Desert Air Quality Management District did not make the required SIP submittals by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The negative declarations being acted on in this direct final rulemaking were submitted in response to the EPA finding of failure to submit.

[3] Southeast Desert Air Quality Management Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995, unless, by no later than October 11, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

**Regulatory Process**

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

Because this action does not create any new requirements but simply includes additional information into the SIP, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

**Unfunded Mandates**

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The negative declarations being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this [proposed or final] action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated July 10, 1995.

**Felicia Marcus,**

*Regional Administrator.*

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

## Subpart F—California

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by removing paragraph (c)(198)(ii).

3. Subpart F is amended by adding § 52.222 to read as follows:

**§ 52.222 Negative declarations.**

(a) The following air pollution control districts submitted negative declarations for volatile organic compound source categories to satisfy the requirements of section 182 of the Clean Air Act, as amended. The following negative declarations are approved as additional information to the State Implementation Plan.

(1) Mojave Desert Air Quality Management District.

(i) Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing were submitted on July 13, 1994 and adopted on May 25, 1994.

(ii) Asphalt Air Blowing was submitted on December 20, 1994 and adopted on October 26, 1994.

(iii) Vacuum Producing Devices or Systems was submitted on December 29, 1994 and adopted on December 21, 1994.

[FR Doc. 95–22148 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–W

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## 40 CFR Part 52

**[CT–18–1–6482a; A–1–FRL–5271–3]**

## Approval and Promulgation of Air Quality Implementation Plans—Connecticut; PM10 Attainment Plan and Contingency Measures for New Haven

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut to satisfy certain federal requirements for the New Haven initial PM10 nonattainment area. The purpose of this action is to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). EPA is also approving reasonable available control measures (RACM) and contingency measures for the New Haven initial PM10 moderate nonattainment area as established in this SIP revision, since Connecticut has demonstrated implementation of RACM will attain and maintain the PM10 NAAQS. Additionally, EPA is approving Connecticut's adoption of the PM10 NAAQS and emergency episode regulation. This action is being taken under the Clean Air Act.

**DATES:** This final rule is effective November 13, 1995, unless notice is received by October 11, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Building (AAA), Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air,

Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW, (LE–131), Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, (617) 565–4982.

**SUPPLEMENTARY INFORMATION:**

## Background

Part D, Subparts 1 and 4 of Title I of the Clean Air Act Amendments of 1990 (hereafter referred to as ''the Act'') set out air quality planning requirements for moderate PM10 nonattainment areas. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM10 nonattainment area SIP requirements. [See, generally, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).] Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this approval and the supporting rationale.

By November 15, 1991, States containing initial moderate PM10 nonattainment areas were required to submit, among other things, the following items. [See §§ 172(c), 188, and 189 of the Act.]

- Provisions to assure that reasonably available control measures (RACM)—including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)—shall be implemented no later than December 10, 1993;
- Either a demonstration, including air quality modeling, that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;
- Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and
- Provisions to assure that the control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors except where the Administrator determines that such sources do not contribute significantly to PM10 levels which exceed the NAAQS in the area.

Some provisions were due at a later date. States with initial moderate PM10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM10 by June 30, 1992. [See § 189(a).] Such States also must submit contingency measures by November 15, 1993—which become effective without further action by the State or EPA—upon a determination by EPA that the area has failed to achieve RFP or to attain the PM10 NAAQS by the applicable statutory deadline. [See § 172(c)(9) and 57 FR 13543–44.]

## Summary of Connecticut's SIP Revision

On March 24, 1994, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of 7 consent orders and corresponding compliance plans, which contain enforceable control measures to reduce the re-entrainment of fugitive emissions from roads in New Haven. The implementation of these control measures by the end of 1994 will reduce PM10 emissions by 157 tons below the uncontrolled levels. Accordingly, CT DEP has adopted reasonable available control measures (RACM) for PM10 and through dispersion modeling has demonstrated that these control measures are sufficient to expeditiously attain PM10 NAAQS in New Haven. As required, the road dust control measures implemented through the consent orders also assure maintenance of the 24-hour PM10 NAAQS 3 years beyond the December 31, 1994 statutory attainment date. Additionally, Connecticut's SIP revision provides for the implementation of contingency measures, which were due to EPA by November 15, 1993. CT DEP submitted a supplement on May 20, 1994, which relies on a conservative strategy from one of the consent orders to satisfy the requirements for § 172(c)(9) contingency measures. This submittal demonstrates that the City of New Haven's controls will go beyond RACM and these excess reductions will serve as Connecticut's contingency measures.

These submittals complete the attainment plan and contingency measures for New Haven by meeting the applicable requirements to demonstrate attainment of the PM10 NAAQS by December 31, 1994 and maintenance of those standards for 3 years beyond that. These requirements are outlined in Part D, Subparts 1 and 4 of the Act and elaborated upon in the General Preamble.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–66.) Specific requirements and the rationale for EPA's proposed action are detailed in the Technical Support Document (TSD), dated March 27, 1995, accompanying this approval action and are summarized, but not restated, here in the following paragraphs. Interested parties should consult the TSD or Connecticut's submittals for details on the aspects of the New Haven SIP.

### *Procedural Background*

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Section 172(c)(9) of the Act also requires that plan provisions for nonattainment areas meet the applicable provisions of § 110(a)(2).

EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action. (See § 110(k)(1) and 57 FR 13565.) EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law if EPA does not make a completeness determination by 6 months after receipt of the submittal.

The State of Connecticut held public hearings on August, 20, 1993, October 18, 1993, December 29, 1993, and January 28, 1994 to entertain public comment on the various components of the PM10 attainment plan, consent orders, and compliance plans proposed for New Haven. The Commissioner of CT DEP (the Governor's designee) submitted the plans and consent orders to EPA on March 24, 1994 as a proposed revision to the SIP. On May 20, 1994, the Commissioner further submitted proposed PM10 contingency measures for New Haven.

On March 18, 1993, the State of Connecticut held a public hearing to amend its air quality standards and emergency episode regulations

concerning PM10. The CT DEP adopted the amendments upon filing with the Secretary of State on April 23, 1993, and the EPA received them as a proposed revision to the SIP on March 16, 1995.

EPA reviewed all submittals to determine completeness in accordance with criteria outlined in 40 CFR Part 51 Appendix V and as amended by 57 FR 42216 (August 26, 1991). In letters dated May 12, 1994, July 2, 1994, and April 5, 1995, EPA-New England informed the Connecticut Governor's designee that the respective submittals were determined complete and explained how the review process would proceed.

*Accurate Emissions Inventory*

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because such inventories are necessary to an area's attainment demonstration, the emissions inventories must be received with the attainment SIP submission. (See 57 FR 13539.)

CT DEP determined that the PM10 nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites. Mud and dirt from the unpaved areas in their vicinity are chronically dragged out onto area streets and are re-entrained by local traffic, contributing to high levels of airborne PM10 and therefore exceedences at nearby monitors. Corroborating CT DEP's observations and conclusions, Midwest Research Institute (MRI) made an independent general assessment of the Stiles Street area, as presented in a revised final report titled *Recommendations for an Approvable SIP Revision: Revised Final Report* (September 10, 1993).

CT DEP submitted an emissions inventory for baseyear 1990. Due to the localized and unique nature of the complex fugitive dust sources, a micro-scale inventory was developed for this section of New Haven, while the remainder of the inventory was developed on a larger scale from county or town-wide data. Moreover, Connecticut DEP's dispersion modeling confirms what its inventory shows: point sources do not contribute significantly to PM10 NAAQS violations in this airshed. EPA considers control measures which do not expedite attainment, or affect sources that contribute to PM10 levels, unreasonable even though technologically and economically feasible.

Entrainment of dust by vehicular traffic contributed 2407 tons of the 1990 baseyear actual PM10 emissions, which totalled 2990 tons. Point sources contributed 120 tons and area sources added 463 tons more. EPA is satisfied that Connecticut's inventory is sufficiently accurate and comprehensive for determining the adequacy of the New Haven attainment demonstration consistent with the requirements in § 172(c)(3) and § 110(a)(2)(k). Therefore, EPA is approving this emissions inventory, the details of which are embodied in the TSD.

*RACM/RACT*

As noted, the initial moderate PM10 nonattainment areas were required to submit provisions to assure that RACM/RACT are implemented no later than December 10, 1993. (See §§ 172(c)(1) and 189(a)(1)(C).) The General Preamble contains a detailed discussion of EPA's interpretation of the RACM/RACT requirement. (See 57 FR 13539–45 and 13560–61.)

CT DEP attributed the highest PM10 contributions in the New Haven area to mud and dirt from unpaved areas being dragged out onto area streets and re-entrained by local traffic. Also, frequent travel across private unpaved storage areas and emissions from loading and unloading of shredded scrap metal contribute to excessively high ambient PM10 levels in the area.

Accordingly, CT DEP negotiated and executed a set of 7 consent orders and compliance plans to implement RACM for PM10 area sources in New Haven. These orders and their effective dates are as outlined below.

CONSENT ORDERS FOR NEW HAVEN INITIAL MODERATE PM10 NONATTAINMENT AREA

| Order No. | State of Connecticut vs. | Effective date |
|---|---|---|
| 8073 | City of New Haven | September 24, 1993. |
| 8074 | Waterfront Enterprises, Inc. | November 5, 1993. |
| 8075 | Laydon Construction | September 21, 1993. |
| 8076 | United Illuminating Company | December 2, 1993. |
| 8076c | M. J. Metals, Inc. | June 18, 1993. |
| 8078 | New Haven Terminal, Inc. | November 15, 1993. |
| 8079 | Yankee Gas Services Company | September 24, 1993. |

Specifically, the control measures adopted accomplish the following.

- All unpaved private industrial travel lanes and unpaved public roads in the Stiles Street area will be eliminated.
- All paved private travel lanes will be delineated with concrete rails or other effective borders for the purpose of eliminating off-pavement travel and reducing the transfer of exposed soil to adjacent road surfaces.
- Private travel roads will be posted with speed limit and directional signing to reduce additional fugitive emissions and vehicle miles traveled (VMT).
- All open storage lots will be covered with gravel to a minimum depth of 2 inches.
- All areas not used for travel, storage, or parking (or any other active use) will be mulched and vegetated or covered with gravel and rendered inaccessible to vehicular travel.
- Any significant piles of sand, scrap metal, or other erodible materials will be covered, sheltered with a wind break, and/or operated in conjunction with a wet suppression system.
- Segments of some public roads in the area will be lined with guard rails or other barriers to prevent further off-pavement travel.
- All paved private travel lanes and city streets in the Stiles Street area will be put on a maintenance plan, which includes periodic street sweeping.

Each consent order requires a schedule and written plan detailing control measures designed to reduce PM10 emissions for each party's responsibility. CT DEP included these orders and plans in the March 24, 1994 submittal and EPA will incorporate them into Connecticut's SIP. Approval of the SIP will make these consent orders and compliance plans federally enforceable. EPA is therefore approving the control strategy as meeting RACM/RACT requirements.

*Demonstration*

As noted, initial moderate PM10 nonattainment areas were to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994. [See § 189(a)(1)(B) of the Act.] CT DEP submitted an attainment demonstration based on dispersion modeling in accordance with EPA's ''Guideline on Air Quality Modeling (Revised)'' (GAQM) (40 CFR Part 51 Appendix W) to model New Haven for a determination of PM10 design concentrations.

The 24-hour PM10 NAAQS is 150 micrograms per cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. [See 40 CFR 50.6.] Based on modeling 5 years of representative meteorological data and projecting growth on a controlled emissions inventory for 1994, the 24-hour design concentration for New Haven was predicted as 135 $\mu g/m^3$. This demonstrates that implementation of RACM prescribed for New Haven will attain the 24-hour PM10 NAAQS. The annual PM10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. The predicted annual design concentration of 46 $\mu g/m^3$ demonstrates that New Haven will also attain the annual PM10 NAAQS.

CT DEP's submittal further projected emissions for New Haven inventory to 1997 in order to demonstrate maintenance. Further dispersion modeling indicates that the control strategy, summarized above in the section titled RACT/RACM, will maintain air quality levels less than the PM10 NAAQS at least through December 31, 1997. This demonstration meets the EPA requirement for a minimum 3-year maintenance projection beyond the statutory attainment deadline. The TSD provides more details on EPA's review of the maintenance demonstration and the control strategy used.

*PM10 Precursors*

The control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors unless EPA determines such sources do not contribute significantly to PM10 levels in excess of the NAAQS in that area. [See § 189(e) of the Act.]

CT DEP's analysis of air quality and emissions data for New Haven demonstrates that PM10 nonattainment in New Haven is a micro-scale fugitive dust problem. EPA agrees that gaseous emissions, such as VOC, $SO_2$, and $NO_2$, do not contribute to PM10 levels above the NAAQS in New Haven. Consequently, stationary sources in New Haven need no further emission controls for possible PM10 precursors. The TSD accompanying this notice contains a further discussion of the data and analyses addressing the contribution of possible precursor sources in this area.

*Quantitative Milestones and Reasonable Further Progress*

Section 171(1) of the Act defines reasonable further progress (RFP) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. The PM10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994. (See § 189(c) of the Act.)

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM10 NAAQS by December 31, 1994. [See § 171(1).] Even though Connecticut's PM10 SIP does not require that all measures required for attainment be fully implemented effective December 1, 1993, CT DEP's dispersion modeling aptly confirms that implementation of RACM will bring about attainment by December 31, 1994, the statutory attainment date for initial moderate PM10 nonattainment areas. (See § 188(c)(1).) EPA keys the first milestone to the SIP revision containing control measures which will result in emission reductions (57 FR 13539) and, since the PM10 attainment date is less than 3 years from the actual submittal date of CT DEP's SIP revision, EPA is accepting CT DEP's SIP revision as its first quantitative milestone for New Haven. Subsequently, until New Haven is redesignated to attainment, Connecticut's SIP commits CT DEP to submit quantitative milestone and RFP reports to EPA every 3 years. EPA is therefore approving Connecticut's approach to quantitative milestones and RFP.

*Enforceability Issues*

All measures and other elements in the SIP must be enforceable by the State and EPA. (See §§ 172(c)(6) and 110(a)(2)(A) and 57 FR 13556.) The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (See 57 FR 13541.) Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP. (See § 110(a)(2)(C).)

The particular control measures contained in the SIP are summarized above under the section headed RACM/RACT. These control measures are defined and detailed in the compliance plans required under each negotiated consent order. Approval of this SIP submittal and incorporation by reference will make the consent orders, along with the control measures perscribed and contained therein, for New Haven federally enforceable.

*Contingency Measures*

As provided in § 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. (See generally 57 FR 13543–44.) These measures were required to be submitted by November 15, 1993 for the initial moderate nonattainment areas. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the $PM_{10}$ NAAQS by the applicable statutory deadline.

Connecticut's May 20, 1994 supplemental submittal for New Haven addressed contingency measures required under § 172(c)(9), since the submittal on March 24, 1994 did not. It relies on a conservative strategy through the consent order and compliance plan for the City of New Haven. This submittal demonstrates that the City of New Haven is controlling $PM_{10}$ emissions beyond RACM. CT DEP did not consider (i.e., take credit for) these additional measures in the 1994 attainment year or 1997 maintenance year modeling demonstrations. Specifically, these measures consist of the following:

- Installing granite curbs along Waterfront Street between Forbes Avenue and Alabama Street;
- Planting vegetation in barren areas between Waterfront Street and the I–95 exit ramp to the east, including new trees to act as permanent barriers from illegal parking;

• Reconstructing Stiles Street, including installation of sewers, catch-basins, curbs, and sidewalks on both sides of the street;

• Installing granite curbing along both sides of Connecticut Avenue from the edge of existing curbing north to Albia Street and south to connect with the existing curbing; and

• Repaving Alabama Street from Waterfront Street to its end at the east, including installation of sewers, catch-basins, curbs, handicapped curb cuts at the corners, and vegetation between curb and lot lines, and fencing where necessary.

Contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate RFP for one year or 25 percent for the initial moderate nonattainment areas. (See 57 FR 13543–4.) CT DEP's contingency measures submittal estimates the emissions reductions due to these measures to be 84 tons per year. Since total emission reductions required to demonstrate attainment for New Haven by December 31, 1994 are 157 tpy, the estimated 84 tpy emissions reduction (or 53.5 percent) from the control measures found in the control plan for the City of New Haven will exceed one year or 25 percent of RFP.

EPA finds that CT DEP's contingency measures for New Haven fulfill § 172(c)(9) requirements.

*Other SIP Requirements*

CT DEP has amended Sections 22a–174–24(f) and –24(g) ''Connecticut primary and secondary ambient air quality standards for particulate matter'' and 22a–174–6(a) and –6(b) ''Air Pollution'' emergency episode procedures.'' These regulations now reflect the $PM_{10}$ NAAQS and contain the $PM_{10}$ alert, warning and emergency levels that appear in EPA's ''Example Regulations for Prevention of Air Pollution Emergency Episodes'' (Appendix L to Part 51). There only exist two outstanding definitions which Connecticut should adopt to complete all § 110 requirements: ''particulate matter emissions'' and ''$PM_{10}$ emissions,'' but their absence here does not preclude EPA's approval of all else detailed above.

Under § 188 of the Act, if an initial moderate nonattainment area does not meet the December 31, 1994 attainment deadline, the area is normally ''bumped up'' to a serious non-attainment area and must implement additional control measures and must also submit another SIP revision. However, if an area can show, among other things, that the area had no more than one exceedance at any monitoring site in the nonattainment area in the year preceding the extension year, the area may apply for, and obtain a 1-year extension of the attainment date. (EPA may grant a total of two 1-year extensions of the attainment date to a qualifying area.) Based on air quality data for 1992–94, New Haven did not meet the December 31, 1994 attainment deadline, mainly because of a delay in implementing RACM. However, since mid-1994, when the implementation of New Haven's prescribed control measures were mostly underway and in some cases complete, New Haven has not seen further exceedences of the $PM_{10}$ NAAQS. Actually, there has been a dramatic decrease in monitored $PM_{10}$ levels at the Yankee Gas monitor since then. On March 31, 1995, Connecticut DEP applied for a 1-year extension of the attainment deadline for New Haven, and EPA is granting the extension in a separate notice elsewhere in today's **Federal Register**. This, however, does not preclude EPA from approving the attainment plan and contingency measures for New Haven.

## Final Action

EPA is approving the SIP revisions submitted to the EPA on March 24 and May 20, 1994. These revisions include 7 consent orders (listed previously in the table in the section titled RACM/RACT) and compliance plans which the CT DEP negotiated and executed to bring about attainment of the $PM_{10}$ NAAQS for the New Haven initial moderate PM10 nonattainment area. These orders and plans impose RACM and delineate contingency measures for New Haven. Among other things, the State of Connecticut has demonstrated that, with the implementation of RACM, the New Haven initial moderate PM10 nonattainment area attains the PM10 NAAQS and will maintain air quality levels below the NAAQS at least through December 31, 1997.

EPA is also approving two amendments to the Regulations of Connecticut State Agencies concerning abatement of air pollution: adoption of the PM10 NAAQS in amended Sections 22a–174–24(f) and –24(g) ''Connecticut primary and secondary ambient air quality standards for particulate matter'' and emergency episodes for PM10 in amended Sections 22a–174–6(a) and –6(b) '' 'Air Pollution'' emergency episode procedures'', both received by EPA on March 16, 1995 and effective in the State of Connecticut on July 7, 1993.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Under the Regulatory Flexibility Act, 5 USC § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 USC §§ 603 and 604. Alternatively, EPA 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.

Under §§ 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under § 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

SIP approvals under § 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 EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 USC § 7410 (a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

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

Under § 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 November 13, 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 § 307(b)(2)).

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

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

**Note:** Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 26, 1995.

**John P. DeVillars,**

*Regional Administrator, EPA-New England.*

Part 52 of chapter I, 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 USC 7401–7671q

## Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(68) to read as follows:

### § 52.370 Identification of plan.

* * * * * *

(c) * * *

(68) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on March 24, 1994, May 20, 1994, and March 4, 1994.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated March 24, 1994 submitting a revision to the Connecticut State Implementation Plan.

(B) Letter from the Connecticut Department of Environmental Protection dated May 20, 1994 submitting a supplemental revision to the Connecticut State Implementation Plan.

(C) State Order No. 8073: State of Connecticut vs. City of New Haven (effective September 24, 1993) and attached plan titled ''Remedial Action Plan for Prevention of Airborne Particulate Matter and Fugitive Discharge of Visible Emissions in the Alabama Street/East Shore Parkway Area of New Haven.''

(D) State Order No. 8074: State of Connecticut vs. Waterfront Enterprises, Inc. (effective November 5, 1993) and attached plan titled ''Proposed Operation Plan in Response to Unilateral Order (September 20, 1993).''

(E) State Order No. 8075: State of Connecticut vs. Laydon Construction, (effective September 21, 1993) and attached plan titled ''Plan for Control of Fugitive Emissions of PM10 (September 21, 1993).''

(F) State Order No. 8076: State of Connecticut vs. United Illuminating Company (effective December 2, 1993) and attached plan titled ''Remediation Plan for Fugitive Emissions: Alabama Street and Connecticut Avenue, New Haven, Connecticut (November 19, 1993).''

(G) State Order No. 8076c: State of Connecticut vs. M. J. Metals, Inc. (effective June 18, 1993).

(H) State Order No. 8078: State of Connecticut vs. New Haven Terminal, Inc. (effective November 15, 1993) and attached plan titled ''Fugitive Dust Control Plan (Revised January 19, 1994).''

(I) State Order No. 8079: State of Connecticut vs. Yankee Gas Services Company (effective September 24, 1993) and attached plan titled ''Revised Compliance Plan for Consent Order No. 8079 (August 31, 1993).''

(J) Letter from the Connecticut Department of Environmental Protection dated March 4, 1994 (received March 16, 1995) submitting two amendments to the Regulations of Connecticut State Agencies concerning abatement of air pollution: amended Sections 22a–174–24(f) and –24(g) ''Connecticut primary and secondary ambient air quality standards for particulate matter'' and amended Sections 22a–174–6(a) and –6(b) '' 'Air Pollution' emergency episode procedures'' (both effective July 7, 1993).

(K) Amended Regulations of Connecticut State Agencies: amended Sections 22a–174–24(f) and –24(g) ''Connecticut primary and secondary ambient air quality standards for particulate matter'' and amended Sections 22a–174–6(a) and –6(b) '' 'Air Pollution' emergency episode procedures'' (both effective July 7, 1993).

(ii) Additional materials.

(A) An attainment plan and demonstration which outlines Connecticut's control strategy and for attainment and maintenance of the PM10 NAAQS, implements and meets RACM and RACT requirements, and provides contingency measures for New Haven.

(B) Nonregulatory portions of the submittal.

[FR Doc. 95–22130 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[DE22–1–7160a, DC19–1–7159a, MD36–1–7161a, PA48–1–7162a, VA42–1–7163a; FRL–5291–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia; Revisions to the State Implementation Plans (SIPs) Addressing Ozone Monitoring

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the ozone State Implementation Plans (SIPs) for Delaware, the District of Columbia (the District), Maryland, Pennsylvania and Virginia. This action is based upon revision requests which were submitted by these states to satisfy the requirements of the Clean Air Act (Act), as amended November 15, 1990, and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulations required affected states to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993.

**DATES:** This final rule is effective November 13, 1995 unless adverse comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

**ADDRESSES:** Written comments should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; Pennsylvania Department of Environmental Protection, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Catherine L. Magliocchetti, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–6863.

**SUPPLEMENTARY INFORMATION:**

## I. Summary of State Submittals

SIP revisions incorporating PAMS into the ambient air quality monitoring networks of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) were submitted to EPA from the following state agencies on the following days:

(1) Delaware's Department of Natural Resources & Environmental Control submitted a PAMS SIP revision on March 24, 1994;

(2) The District of Columbia's Department of Consumer and Regulatory Affairs submitted a PAMS SIP revision on January 14, 1994;

(3) Maryland's Department of the Environment submitted a PAMS SIP revision on March 24, 1994;

(4) Pennsylvania's Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection) submitted a PAMS SIP revision on September 23, 1994; and

(5) Virginia's Department of Environmental Quality submitted a PAMS SIP revision on November 23, 1994. These states will establish and maintain PAMS as part of their overall ambient air quality monitoring networks.

Section 182(c)(1) of the Act and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen ($NO_X$), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the Act. In addition, the Act requires that, following the promulgation of the rules relating to enhanced ambient monitoring, states must commence actions to adopt and implement programs based on these rules, to improve the monitoring of ambient concentrations of ozone, $NO_X$, and VOC; and to improve the monitoring of emissions of $NO_X$ and VOC.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires states with serious and above areas to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, section 58.20(f) requires these states to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

While EPA recognizes that none of the above states met either of the deadlines, EPA considers this point moot, since these states have since submitted revisions and adopted implementation schedules for PAMS in all affected areas. These submittals have been reviewed by the EPA and are intended to satisfy the requirements of 40 CFR section 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR 58. However, the network description is negotiated and approved during an annual review as required by 40 CFR section 58.25 and section 58.36, respectively, and the revision codified at 40 CFR section 58.46.

The PAMS SIP revisions outlined above are intended to meet the requirements of section 182(c)(1) of the Act and affect compliance with the PAMS regulations, codified at 40 CFR part 58, as promulgated on February 12, 1993.

Public hearings on the PAMS SIP revisions were held on the following dates:

(1) Delaware—November 18, 1994;
(2) the District—January 4, 1994;
(3) Maryland—November 4, 8, 9 and 10, 1994;
(4) Pennsylvania—August 1, and 9, 1994; and
(5) Virginia—August 15, 1994.

None of the states received comment on the PAMS revisions during the public hearings or public comment periods.

## II. Analysis of State Submittals

The PAMS SIP revisions will provide Delaware, the District, Maryland, Pennsylvania, and Virginia with the authority to establish and operate the PAMS sites, secure State funds for PAMS and provide the EPA with the authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR part 58, the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58 (EPA–450/4–79–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993 memorandum from G. T. Helms entitled Final Boilerplate Language for the PAMS SIP Submittal (Helms boilerplate memorandum), the Act and the General Preamble. The September 2, 1993 Helms boilerplate memorandum stipulates that the PAMS SIP, at a minimum, must:

(a) Enable the monitoring of non-criteria pollutants (such as $NO_X$, nitric

oxide, and speciated VOC including carbonyls) and meteorological parameters, in addition to the monitoring of criteria pollutants (such as ozone and nitrogen dioxide);

(b) Provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules;

(c) Make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network; and

(d) Require revisions to the statement that SLAMS will employ Federal reference methods (FRM) or equivalent methods inasmuch as PAMS sampling will be conducted using methods approved by the EPA which are not FRM or equivalent.

The PAMS SIP revisions for Delaware, the District, Maryland, Pennsylvania, and Virginia provide that each state will implement PAMS as required in 40 CFR Part 58, as amended February 12, 1993. This program is required in all ozone nonattainment areas designated as serious, severe, or extreme. The states will also implement these regulations in any existing ozone nonattainment area reclassified to serious, severe, or extreme, or any newly designated ozone nonattainment areas classified as serious or above. The PAMS stations will become a part of the existing NAMS/SLAMS network and will monitor ambient levels of ''criteria pollutants,'' ''non-criteria pollutants,'' and meteorological parameters.

Each state will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR Part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. Also, each state has begun implementing its PAMS network as required in 40 CFR Part 58.

All of the PAMS SIP revisions mentioned also include provisions to meet quality assurance requirements as contained in 40 CFR Part 58, Appendix A. All of the states also assure that the PAMS monitors will meet monitoring methodology requirements contained in 40 CFR Part 58, Appendix C. These states' SIP revisions also assure that their PAMS networks will be phased in over a period of five years as required in section 58.44. The states' PAMS SIP submittals and the EPA's technical support document are available for viewing at the EPA Region III Office and the state agencies as outlined under the **ADDRESSES** Section of this FR notice.

## III. Final Action

EPA is approving revisions to the ozone SIPs for PAMS in Delaware, the District of Columbia, Maryland, Pennsylvania and Virginia. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the FR publication, the EPA is proposing to approve the SIP revision should adverse comments be received. Thus, the action will be effective November 13, 1995 unless, by no later than October 11, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent notice which will withdraw the final action. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective November 13, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Clean Air Act Amendments. The EPA has determined that this action conforms with those requirements.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA 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 Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final notice that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Act, petitions for judicial review of this Direct Final PAMS approval action must be filed in the U.S. Court of Appeals for the appropriate circuit by November 13, 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 in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 18, 1995.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart I—Delaware

2. Section 52.430 is added to read as follows:

**§ 52.430 Photochemical Assessment Monitoring Stations (PAMS) Program.**

On March 24, 1994 the Delaware Department of Natural Resources & Environmental Control submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of the Delaware SIP. As with all components of the SIP, Delaware must implement the program as submitted and approved by EPA.

## Subpart J—District of Columbia

3. Section 52.480 is added to read as follows:

**§ 52.480 Photochemical Assessment Monitoring Stations (PAMS) Program.**

On January 14, 1994 the District of Columbia's Department of Consumer and Regulatory Affairs submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of the District of Columbia SIP. As with all components of the SIP, the District of Columbia must implement the program as submitted and approved by EPA.

## Subpart V—Maryland

4. Section 52.1080 is added to read as follows:

**§ 52.1080 Photochemical Assessment Monitoring Stations (PAMS) Program.**

On March 24, 1994 Maryland's Department of the Environment submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of Maryland SIP. As with all components of the SIP, Maryland must implement the program as submitted and approved by EPA.

## Subpart NN—Pennsylvania

5. Section 52.2035 is added to read as follows:

**§ 52.2035 Photochemical Assessment Monitoring Stations (PAMS) Program.**

On September 23, 1994 Pennsylvania's Department of Environmental Resources (now known as the Department of Environmental Protection) submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of Pennsylvania SIP. As with all components of the SIP, Pennsylvania must implement the program as submitted and approved by EPA.

## Subpart W—Virginia

6. Section 52.2426 is added to read as follows:

**§ 52.2426 Photochemical Assessment Monitoring Stations (PAMS) Program.**

On November 23, 1994 Virginia's Department of Environmental Quality submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of the Virginia SIP. As with all components of the SIP, Virginia must implement the program as submitted and approved by EPA.

[FR Doc. 95–22158 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[FRL–5291–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Disapproval of the Enhanced Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA hereby gives notice that pursuant to its authority under Clean Air Act (the Act) section 110(k)(4), 42 U.S.C. 7410(k)(3), in an April 13, 1995 letter EPA notified Pennsylvania that the conditional approval of the Pennsylvania enhanced Inspection and Maintenance (I/M) State Implementation Plan (SIP) revision had been converted to a disapproval. The letter triggered the 18-month timeclock for the mandatory application of sanctions under section 179(a) of the Act and the 24-month timeclock for the Federal Implementation Plan (FIP) under section 110(c)(1). This also serves to amend the C.F.R. to note the conversion of the conditional approval to a disapproval.

**EFFECTIVE DATE:** September 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kelly L. Bunker, (215) 597– 4554.

**SUPPLEMENTARY INFORMATION:** On August 31, 1994 a final rule was published in the **Federal Register** (59 FR 44936) which conditionally approved the November 3, 1993 Pennsylvania SIP submittal for a centralized, test-only enhanced I/M program. The first two conditions of the conditional approval were required to be fulfilled by December 31, 1994. The first two conditions for approvability were as follows:

(1) by December 31, 1994, the Commonwealth was required to submit to EPA as a SIP revision, the *Pennsylvania Bulletin* notice which certified that the enhanced I/M program was required in order to comply with federal law, certified the geographic areas which were subject to the enhanced I/M program, and certified the

commencement date of the enhanced I/M program and

(2) by December 31, 1994, the Commonwealth was required to submit to EPA as a SIP amendment, the amendments to the Pennsylvania I/M regulation, 67 Pa Code § 178.202–205, which require EPA approval prior to implementation of any alternate purge test procedure and incorporate the transient emission standards for Tier 1 vehicles, the Phase 2 standards for all vehicle types and model years, and the transient and evaporative purge test procedures found in the final version of the EPA document entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA-AA-EPSD-IM–93–1, April 1994.

The proposed rulemaking stated that if the Commonwealth did not submit, by December 31, 1994, a SIP revision in response to the first two conditions of the approval action, the conditional approval would convert to a disapproval. EPA has not received a SIP revision which fulfills the first two conditions of the August 31, 1994 conditional approval. EPA notified the Commonwealth by an April 13, 1995 letter that the conditional approval of the Pennsylvania enhanced I/M SIP had been converted to a full disapproval pursuant to section 110(k)(4) of the Clean Air Act (the Act). This action taken on April 13, 1995 started both the 18 and subsequent 6 month sanctions clocks and the 24-month FIP clock. The Commonwealth must submit and EPA must take rulemaking action to approve an enhanced I/M SIP by October 13, 1996 and April 13, 1997, respectively, in order to halt these sanctions and FIP clocks.

EPA believes that the good cause exception to the notice and comment rulemaking requirement applies to this rulemaking action. [Administrative Procedure Act (APA) section 553(a)(B)]. Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency, for good cause, determines that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' In the present circumstance, notice and comment are unnecessary. The conversion of the conditional approval to a disapproval does not require any judgment on the part of the Agency. The issue is clear that the Agency must state whether or not it has received any SIP revision by the required date from the Commonwealth in response to the conditions set forth in the conditional approval of the Commonwealth's enhanced I/M SIP. No substantive review is required for such a determination. The Agency is the only judge of whether or not it has received the SIP revision to meet the conditions of the conditional approval. Because there is nothing on which to comment, notice and comment rulemaking are unnecessary.

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

Environmental protection, Air pollution control, Ozone.

Dated: August 2, 1995.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart NN—Pennsylvania

2. Section 52.2023 is amended by adding paragraph (j) to read as follows:

**§ 52.2023 Approval status.**

* * * * *

(j) The conditionally approved Pennsylvania enhanced I/M SIP revision (59 FR 44936) submitted on November 3, 1993 by the Pennsylvania Department of Environmental Resources was converted to a disapproval by an April 13, 1995 letter from EPA to Pennsylvania.

**§ 52.2026 [Removed and Reserved]**

3. Section 52.2026 is removed and reserved.

[FR Doc. 95–22332 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[TN–126–6580a; FRL–5282–8]**

## Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Permit Requirements

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the permit requirements for major sources of air pollution for the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP). EPA is also approving the recodification of this chapter. On November 12, 1993, the State submitted revisions to the Nashville/Davidson portion of the Tennessee SIP on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, the permit requirements, and the exemptions. As a supplement to this submittal, on July 15, 1994, the State also submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP.

**DATES:** This final rule will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Karen C. Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203

**FOR FURTHER INFORMATION CONTACT:** Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365 The telephone number is 404/347–3555 x4197. Reference file TN–126–1–6580a.

**SUPPLEMENTARY INFORMATION:** The State of Tennessee through the Tennessee Department of Environment and Conservation submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP to EPA on November 12, 1993. EPA found these submittals to be complete on January 21, 1994.

### A. Permit Requirement Revisions

Nashville/Davidson County officially adopted proposed amendments to the Chapter 10.56, ''Air Pollution Control'' of the Metropolitan Code of Laws on September 14, 1993. These regulatory revisions to their Chapter 10.56 change

the permit requirements for major air pollution sources. EPA is approving all of the following revisions except where it is specifically noted that the proposed revision is not receiving action.

*Section 10.56.010—Definitions*

Definitions of ''act,'' ''administrator,'' ''major source,'' ''permitted allowable emission,'' and ''volatile organic compounds,'' were added. The definition of ''major stationary source'' was deleted.

A definition for ''Regulated Pollutant'' has been added. However, in response to comments from the EPA this proposed definition is being revised by the State in accordance with their May 30, 1995, letter from Mr. John Walton, Technical Secretary of the Tennessee Air Pollution Control Board, to Mr. Doug Neeley, Chief of the Air Programs Branch of the Region 4 EPA. Therefore, action on the addition of this definition will be taken in future rulemaking.

*Section 10.56.020—Construction Permits*

Paragraphs (I) through (M) were added to clarify the requirements of their permit program. Paragraph (I) limits the operating time of the new or modified source to the time specified within the permit, but not to exceed one hundred and eighty (180) days. It also requires that the Director be notified of the startup date within five (5) working days of the startup. Paragraph (J) requires that all of the compliance testing required by the construction permit must be done in accordance with the requirements of the SIP and the test results must be submitted to the Director as required by the SIP. Any failure to demonstrate compliance will be sufficient grounds for the Director to require changes in the installation before an operating permit will be granted. Paragraph (K) gives the Director the right to observe any compliance tests and to inspect the installation and operation of the equipment. Paragraph (L) grants the EPA Administrator the right to objection and comment on any application for a construction permit for a major source. Paragraph (M) states that eighteen (18) months after receipt of a complete application for a construction permit the application is considered final, and becomes the permit, if there has been no action by the Director.

*Section 10.56.030—Temporary Operating Permit*

This section was deleted. All of the requirements previously contained in this section were moved to Sections 10.56.020 and 10.56.040.

*Section 10.56.040—Operating Permit*

Paragraph (A) was deleted and replaced with a new paragraph (A). All references to ''temporary operating permits'' have been changed to ''construction permits'' in this new paragraph. A minor revision was made to paragraph (B) to limit the operating permit to five (5) years, and paragraphs (C) through (F) were added. Paragraph (C) requires that applications for operating permits be filed by the operators of any sources that were operating prior to the effective date of this regulation. Paragraph (D) grants authority to the Metropolitan Board of Health to specify any additional permitting requirements. Paragraph (E) states that any application for a major source operating permit is also subject to objection and comment by the EPA Administrator. Paragraph (F) declares that an operating permit application may be declared final eighteen (18) months after its receipt, if there has not been any action by the Director.

*Section 10.56.050—Exemptions*

Nashville has proposed to delete the entire Section 10.56.050 [paragraphs (A) through (D)] and replace it with proposed paragraphs (A) and (B). The new paragraph (A) restates the same exemptions that were previously covered in the deleted paragraphs (A) through (D). The new paragraph (B) states that such quantities of air contaminants which adversely affect the public shall not be discharged from any source, regardless of the exemptions listed in the previous paragraph. Proposed paragraphs (C), (D), and (E) were withdrawn by the State in their letter of May 30, 1995, from Mr. Walton to Mr. Neeley in response to comments from the EPA.

*Section 10.56.080—Permit Fees*

Nashville has deleted the section on permit fees in its entirety. The proposed replacement Section 10.56.080 was withdrawn by the State in their letter of May 30, 1995, from Mr. Walton to Mr. Neeley in response to comments from the EPA.

*Section 10.56.120.B.6—Complaint Notice—Hearings Procedure*

The length of time to enter a final order or determination, after final argument, was changed from sixty days to ninety days.

*Section 10.56.210—Hazardous Air Pollutants*

The definition was deleted, and a new definition was added. The new section defines ''Hazardous Air Pollutants'' in accordance with Section 112 of the Clean Air Act, as amended in 1990 (CAA). This new definition will be used in the issuance of synthetic minor operating permits.

*Section 10.56.290—Measurement and Reporting of Emissions*

The old title, ''Measurement of Air Contaminants,'' was deleted and the new title was added. Subparagraph 10.56.290.B.3 was added to provide the requirements for notification of compliance tests.

*Section 10.56.290.E—Emissions Statement*

In this paragraph Nashville/Davidson County requires an annual emissions report from all permitted facilities in accordance with the permitting requirements of Sections 10.56.020 and 10.56.040. In these sections, all sources that emit any regulated air pollutant are required to obtain a permit.

*Section 10.56.310—Severability*

This section was added to the SIP to address severability. In this new section it is stated that all other provisions of this ordinance will remain in full force and effect in the case where a court declares another section unconstitutional, illegal, or unenforceable.

**B. Recodification**

On July 15, 1994, the State submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP. The Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee was recodified from Chapter Four, Subchapter One, into new Chapter 10.56, on August 21, 1991. In this document EPA is approving the recodification.

**Final Action**

EPA is fully approving the submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP, with the exception of the definition of ''regulated pollutant'' in Section 10.56.010 on which action is not being taken in this rulemaking. EPA is also fully approving the recodification of the Air Pollution Control section of the Nashville/Davidson County portion of the Tennessee SIP, as submitted on July 15, 1994. EPA has not reviewed the substance of the remaining regulations, other than those submitted for revision on November 12, 1993. These rules were approved into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State. The EPA's

approval of the renumbering system at this time does not imply any position with respect to the approvability of the substantive rules. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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 Actions**

SIP approvals and partial 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 EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

*Unfunded Mandates*

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 9, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

Part 52 of chapter I, title 40, 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.

## Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(131) to read as follows:

### § 52.2220 Identification of plan.

* * * * *

(c) * * *

(131) On November 12, 1993, the State submitted revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, the permit requirements, and the exemptions. As a supplement to this submittal, on July 15, 1994, the State also submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP. These revisions and recodification incorporate changes to Nashville's Chapter 10.56, which was previously Chapter 4–1–1, which are required in the Clean Air Act as amended in 1990 and 40 CFR part 51, subpart I.

(i) Incorporation by reference.

Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee, Chapter 10.56, Air

Pollution Control, effective November 10, 1993, except for the following parts:

(A) Section 10.56.010, the definition of ''regulated pollutant'';

(B) Section 10.56.040, Paragraph (F);

(C) Section 10.56.050, Paragraphs (C), (D) and (E);

(D) Section 10.56.080.

(ii) Other material. None.

[FR Doc. 95–22145 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[WI55–02–7015; FRL–5289–5]**

## Approval of the State Implementation Plan; Wisconsin

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On January 10, 1995, the United States Environmental Protection Agency (USEPA) proposed approval of the State Implementation Plan (SIP) revision request for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas. The USEPA received no public comments on the above proposed approval. On May 5, 1995, USEPA finalized the first element of the VMT offset program for the Milwaukee area. This rule finalizes the approval of the second element of the VMT offset program for the Milwaukee area.

**EFFECTIVE DATE:** This action will be effective October 11, 1995.

**ADDRESSES:** Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260–7548.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Leslie, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

**SUPPLEMENTARY INFORMATION:**

### I. Background Information

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

As described in the proposal, section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and 3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

As noted in the January 10, 1995, proposal, the USEPA would not take final action on the second element until the State has submitted a complete 15 percent ROP plan. On July 13, 1995, the State of Wisconsin submitted a 15 percent ROP plan with fully enforceable rules that have been subject to public hearing. No TCMs were utilized in the ROP plan to meet the 15 percent reduction in emissions. On July 18, 1995, the USEPA determined that this ROP plan was complete.

### II. Final Rulemaking Action

In this action, USEPA is approving the second element of the VMT offset SIP revision submitted by the State of Wisconsin. The third element of the Wisconsin VMT offset SIP will also be the subject of a future rulemaking.

This action has been classified as a Table 3 action by the Regional Administrator under the 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 (OMB) has exempted this regulatory action from Executive Order 12866 review.

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 any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 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)).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action will relieve requirements otherwise imposed under the Clean Air Act and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: August 17, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

40 CFR part 52, is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C 7401–7671q.

## Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (h) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

* * * * *

(h) Approval—On November 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for forecasting VMT in the severe ozone nonattainment area of southeastern Wisconsin and demonstrated that Transportation Control Measures would not be necessary to meet the 15 percent Rate-of-Progress milestone.

[FR Doc. 95–22144 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Parts 52 and 81

**[KY–069–3–6904a; FRL–5277–2]**

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

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

**ACTION:** Direct final rule.

**SUMMARY:** On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone ($O_3$). Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA. In this action, EPA is approving the redesignation to attainment of the Lexington area (Fayette and Scott counties) and the associated maintenance plan because it meets the maintenance plan and redesignation requirements. EPA has approved the requests to redesignate to attainment and maintenance plans for the Owensboro, Edmonson County and Paducah areas. In this action, EPA is also approving the 1990 base year inventory for the Lexington marginal $O_3$ nonattainment area.

**DATES:** This final rule is effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

**FOR FURTHER INFORMATION CONTACT:** Scott Southwick of the EPA Region 4 Air Programs Branch at (404) 347–3555 extension 4207 and at the above address. Reference file KY–69–3–6904.

**SUPPLEMENTARY INFORMATION:** On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Lexington area as nonattainment because the area violated the $O_3$ standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318).

The Lexington marginal $O_3$ nonattainment area (nonattainment area) more recently has ambient monitoring data that show no violations of the $O_3$ National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 $O_3$ seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an $O_3$ maintenance SIP for the nonattainment area and requested redesignation of the nonattainment area to attainment with respect to the $O_3$ NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990–2004 as an amendment to the SIP. On January 15, 1993, July 16, 1993, February 28, 1994, August 29, 1994, and June 14, 1995, the Cabinet submitted revisions addressing public and/or EPA comments on the

redesignation request, maintenance plan, and projection inventory.

On May 7, 1993, Region 4 determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. *See* ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR Part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (*See* Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria (58 FR 38108 (July 15, 1993)). Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. The Cabinet submitted a redesignation request and a maintenance plan on November 13, 1992. When the maintenance plan became state effective on June 14, 1995, the Commonwealth of Kentucky no longer needed parallel processing for the redesignation request and maintenance plan.

The Kentucky redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

**1. The Area Must Have Attained the $O_3$ NAAQS**

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Ambient air quality monitoring data for calendar year 1989 through calendar year 1991 show an expected exceedance rate of less than 1.0 per year of the $O_3$ NAAQS in the marginal nonattainment area. (*See* 40 CFR 50.9 and appendix H.) In addition, there were no violations reported for the 1992, 1993, and 1994 $O_3$ seasons and there have been no violations to date in 1995. Because the nonattainment area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the area has met the first statutory criterion of attainment of the $O_3$ NAAQS. The Commonwealth of Kentucky has committed to continue monitoring the nonattainment area in accordance with 40 CFR 58.

**2. The Area Has Met All Applicable Requirements Under Section 110, and Part D of the Act**

On January 25, 1980, August 7, 1981, November 24, 1981, November 30, 1981, and March 30, 1983, EPA fully approved Kentucky's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 6092, 46 FR 40188, 46 FR 57486, 46 FR 58080, and 48 FR 13168). The approved control strategy did not result in attainment of NAAQS for $O_3$. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA reviewed the Kentucky SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the Commonwealth of Kentucky submitted its redesignation request.

*A. Section 110 Requirements*

Although section 110 was amended by the CAA of 1990, the Kentucky SIP for the marginal nonattainment area meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements.

*B. Part D Requirements*

Before the nonattainment area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for $O_3$ nonattainment areas classified under table 1 of section 181(a). The Lexington nonattainment area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.318). The Commonwealth of Kentucky submitted their request for redesignation of the marginal nonattainment area prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the Commonwealth of Kentucky must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of subpart 2 of part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than three years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to $O_3$ nonattainment areas on or before November 13, 1992, the date that the Commonwealth of Kentucky submitted a complete redesignation request for the marginal nonattainment area. Therefore, the Commonwealth of Kentucky was not required to meet these requirements for purposes of redesignation. The Lexington area currently has a fully approvable New Source Review (NSR) program which was last revised on June 23, 1994 (59 FR 32343). Upon redesignation of the area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On January 25, 1978; September 1, 1989; November 6, 1989; November 13, 1989; November 28, 1989; February 7, 1990; and June 23, 1994, the EPA approved revisions to the Commonwealth of Kentucky's PSD program (43 FR 3360, 54 FR 36307, 54 FR 46613, 54 FR 47211, 54 FR 48887, 55 FR 4169 and 59 FR 32343).

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed,

funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the state revisions to be submitted by November 15, 1992, one year after the date for promulgation of final EPA conformity regulations which were due November 15, 1991. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the Commonwealth of Kentucky is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Kentucky is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the Commonwealth requested redesignation of the Lexington area prior to the deadline for these submittals, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

On February 24, 1994, the Commonwealth of Kentucky revised their maintenance plan to commit to revise the SIP by November 25, 1994, to be consistent with the final Federal regulations on conformity. In addition, the Division for Air Quality and the Kentucky Transportation Cabinet are cooperating in adopting regulations consistent with the final conformity regulation.

B2. Subpart 2 of Part D

The CAA was amended on November 15, 1990, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify $O_3$ nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Lexington area was designated as marginal $O_3$ nonattainment. Because this area is marginal, the area must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has meet the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources as described in section 172(c)(3) by November 15, 1992. On November 13, 1992, the Cabinet submitted an emission inventory on the Lexington area. This emission inventory is being approved in this notice.

(2) Reasonably Available Control Technology (RACT)

The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that $O_3$ nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for $O_3$. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. The Lexington area was not designated nonattainment prior to 1990 and was classified as marginal $O_3$ nonattainment pursuant to the 1990 CAA. Therefore, this area is not subject to the RACT fix-up requirement. However, Kentucky chose to apply RACT on all major sources which commenced on or after the effective date of a particular RACT rule. Kentucky submitted VOC RACT SIP revisions through the Cabinet to EPA on February 12, 1992; October 20, 1992; February 17, 1993; and March 4, 1993. Action was taken December 12, 1993, to approve the SIP revision submitted on February 12, 1992. Action was taken June 23, 1994, to approve the SIP revisions submitted on October 20, 1992, February 17, 1993, and March 4, 1993.

(3) Emissions Statements

The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen ($NO_X$) and VOCs to provide the State with a statement showing actual emissions each year. This request to redesignate was submitted prior to the November 15, 1992, emissions statement deadline. Therefore, the emissions statement program is not a requirement for the Lexington area.

(4) New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. A SIP revision incorporating these requirements was due November 15, 1992. This request to redesignate was submitted prior to the November 15, 1992, NSR deadline. Therefore, the NSR program is not a requirement for the Lexington area.

**3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA**

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Kentucky has a fully approved $O_3$ SIP under section 110(k) for the marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

**4. The Air Quality Improvement Must Be Permanent and Enforceable**

Several control measures have come into place since the nonattainment area violated the $O_3$ NAAQS. Of these control measures, the reduction of fuel volatility from 11.4 psi to 8.6 psi, as measured by the Reid Vapor Pressure (RVP), and fleet turnover produced the most significant decreases in VOC emissions. The table below summarizes total emissions for VOCs. The difference between 1988 and 1990 are actual permanent and enforceable emission reductions which are responsible for the recent air quality improvement in the areas. The VOC emissions in the base year are not artificially low due to local economic downturn.

REDUCTIONS IN VOC EMISSIONS FROM 1988 TO 1990

| MSA | VOCs (tpd) | | |
|---|---|---|---|
| | 1988 | 1990 | 1990–1988 |
| Lexington ..... | 86.31 | 63.79 | 22.52 |

**5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA**

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan

must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the Commonwealth of Kentucky's maintenance plan for the Lexington marginal nonattainment area because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

*A. Emissions Inventory—Base Year Inventory*

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, $NO_X$, and CO emissions for the Lexington marginal nonattainment area. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the $O_3$ NAAQS was not violated during 1990.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SIP Air Pollutant Inventory Management System (SAMS) format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories for the Lexington area is included in this notice for VOCs and $NO_X$. The CO and the biogenic VOC values are shown below and are a part of the 1990 base year emission inventory. This notice is approving the base year inventory.

CO EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

| | Point | Area | Mobile | Non-road | Total |
|---|---|---|---|---|---|
| Lexington | 0.0 | 3.52 | 265.19 | 57.40 | 326.11 |

BIOGENIC EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

| | Biogenic |
|---|---|
| Lexington 1990 Emissions | 24.1 |

*B. Demonstration of Maintenance—Projected Inventories*

Below, totals for VOC and $NO_X$ emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. As indicated in the following tables, increases in VOC and $NO_X$ emissions are projected in the Lexington nonattainment area.

LEXINGTON VOC EMISSION INVENTORY SUMMARY

[Tons per day]

| | 1990 | 1993 | 1996 | 1999 | 2002 | 2004 |
|---|---|---|---|---|---|---|
| Point | 12.39 | 12.63 | 17.77 | 17.21 | 16.85 | 16.68 |
| Area | 14.36 | 14.53 | 14.71 | 14.88 | 15.06 | 15.18 |
| Nonroad | 11.06 | 11.21 | 11.36 | 11.51 | 11.66 | 11.77 |
| Mobile | 25.98 | 24.86 | 24.38 | 24.69 | 25.13 | 26.03 |
| Total | 63.79 | 63.23 | 68.22 | 68.29 | 68.70 | 69.66 |

LEXINGTON $NO_X$ Emission Inventory Summary

[Tons per day]

| | 1990 | 1993 | 1996 | 1999 | 2002 | 2004 |
|---|---|---|---|---|---|---|
| Point | 1.98 | 2.01 | 2.03 | 2.05 | 2.07 | 2.09 |
| Area | 0.34 | 0.34 | 0.35 | 0.35 | 0.36 | 0.36 |
| Nonroad | 8.16 | 8.27 | 8.39 | 8.50 | 8.62 | 8.70 |
| Mobile | 22.06 | 21.23 | 20.98 | 20.95 | 20.85 | 21.71 |
| Total | 32.54 | 31.85 | 31.75 | 31.85 | 31.90 | 32.86 |

VOC AND $NO_X$ PROJECTED EMISSIONS CHANGES

| | VOCs | $NO_X$ |
|---|---|---|
| Lexington ..... | 9.20% | 0.98% |

Because there were increases in VOC and $NO_X$ emissions, Kentucky was required to model to demonstrate maintenance of the $O_3$ standard despite emissions growth. The Empirical Kinetics Modeling Approach (EKMA) was the model used. EKMA models Nonmethane Organic Compounds (NMOC) and NMOC data were available in 1989. For this reason, the model was run using meteorological data from June 23, June 26, and July 18, 1989. These days correspond to the highest ozone monitor readings for which on-site NMOC were available. The EKMA modeling projected $O_3$ values of 0.106 parts per million (ppm) for June 23, 1989, .116 ppm for July 26, 1989, and .064 ppm for July 18, 1995.

The modeling indicated that the future mix of emissions produced ozone levels below the federal $O_3$ standard. Thus, the analysis indicated that the Lexington area should continue to maintain the standard throughout the maintenance period.

*C. Verification of Continued Attainment*

Continued attainment of the $O_3$ NAAQS in the marginal nonattainment areas depends, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Kentucky's contingency plan is triggered by two indicators, the emissions inventory for interim years exceeding the baseline emission inventory by more than 10% or an air quality violation. As stated in the maintenance plan, the Cabinet will be developing these emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment.

*D. Contingency Plan*

The level of VOC and $NO_X$ emissions in the nonattainment area will largely determine its ability to stay in compliance with the $O_3$ NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future $O_3$ air quality problem. The plan contains a contingency to implement RACT on existing major sources in the area where the violation occurred within ninety (90) days. RACT was not required for this nonattainment area because it was designated as a marginal nonattainment area pursuant to the CAA. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

*E. Subsequent Maintenance Plan Revisions*

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such revised SIP will provide for maintenance for an additional ten years.

**Final Action**

EPA is approving Lexington's $O_3$ maintenance plan because it meets the requirements of section 175A. The EPA is redesignating the Lexington nonattainment area to attainment for $O_3$ because the Commonwealth of Kentucky has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. In addition, EPA is approving the 1990 base year emission inventory for the Lexington nonattainment area. 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.

The $O_3$ SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the $O_3$ NAAQS. This final redesignation should not be interpreted as authorizing the Commonwealth of Kentucky to delete, alter, or rescind any of the VOC or $NO_X$ emission limitations and restrictions contained in the approved $O_3$ SIP. Changes to $O_3$ SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, by October 11, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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.

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.

**Unfunded Mandates**

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 107 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control.

Dated: August 8, 1995.

**R.F. McGhee,**

*Acting Regional Administrator.*

Chapter I, title 40, *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.

## Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(76) to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c) * * *

(76) The maintenance plan and for the Lexington area which include Fayette and Scott Counties submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13, 1992, November 24, 1992, March 10, 1993, July 16, 1993, March 3, 1994, and August 29, 1994, September 28, 1994 and June 14, 1995, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Lexington area which include Fayette and Scott Counties.

(i) Incorporation by reference.

(A) Commonwealth of Kentucky Attainment Demonstration and Ten Year Maintenance Plan for all areas designated Marginal Nonattainment for Ozone. The effective date is January 15, 1993.

(B) Table 6–6 Biogenic Emissions Fayette County, Kentucky. The effective date is January 15, 1993.

(C) Table 6–7 Biogenic Emissions, Scott, Kentucky. The effective date is January 15, 1993.

(ii) Other material.

(A) February 28, 1994, letter from John E. Hornback, Director, Division for Air Quality to Mr. Doug Neeley, Chief, Air Programs Branch.

(B) October 4, 1994, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, U.S. EPA Region 4.

(C) January 15, 1993, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to Patrick M. Tobin, Acting Regional Administrator, U.S. EPA Region 4.

* * * * *

## PART 81—[AMENDED]

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

**Authority:** 42.U.S.C. 7401–7671q.

2. In section 81.318, the ozone table is amended by removing the Lexington-Fayette Area and its entries in the first alphabetical listing and by adding in alphabetical order entries for ''Fayette County'' and ''Scott County'' to the second listing of counties to read as follows:

**§ 81.318 Kentucky.**

* * * * *

KENTUCKY-OZONE

| Designated area | Designation | | | | | Classification | |
|---|---|---|---|---|---|---|---|
| | Date [1] | | Type | | | Date [1] | Type |
| Rest of state | | | Unclassifiable/Attainment | | | | |
| * | * | * | * | * | * | * | |
| Fayette County ..... | November 13, 1995. | | | | | | |
| * | * | * | * | * | * | * | |
| Scott County ..... | November 13, 1995. | | | | | | |
| * | * | * | * | * | * | * | |

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

[FR Doc. 95–22156 Filed 9–8–95; 8:45 am]
BILLING CODE 6560–50–P

**40 CFR Part 60**

**[AD–FRL–5287–7]**

## Standards of Performance for New Stationary Sources Appendix A—Reference Methods; Amendments to Method 24 for the Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes procedures for the determination of volatile matter content, density, volume solids, and water content for non thin film ultraviolet radiation-cured coatings. Method 24 refers to the American Society for Testing and Materials (ASTM) procedures for the determination of volatile matter content, density, volume solids, weight solids, and water content of surface coatings. This ASTM method excluded ultraviolet radiation-cured coatings which was not EPA's intent. Therefore, EPA is revising Method 24 to apply to non thin film ultraviolet radiation-cured coatings.

**EFFECTIVE DATE:** September 11, 1995. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of September 11, 1995.

**ADDRESSES:** *Docket.* Docket No. A–94–37, containing material relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and Noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Candace Sorrell at (919) 541–1064, Source Characterization Group A (MD–19), Emissions, Monitoring, and Analysis Division, US Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

### I. The Rulemaking

Method 24 was intended to be used for measuring volatile organic compounds content of all coatings that are intended for either ambient or baking film foundation. When Method 24 was published in 1980 it referenced the American Society for Testing and Materials (ASTM) Method D 2369–81, which the Environmental Protection Agency believed would apply to all coatings. However, that method was not applicable to ultraviolet (UV) radiation-cured coatings and this amendment to Method 24 will incorporate ASTM Method D 5403–93, which does contain those procedures.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulation, nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

### II. Public Participation

The opportunity to hold a public hearing on February 8, 1995 at 10 a.m. was present in the proposal notice, but no one desired to make an oral presentation. The public comment period was from January 9, 1995 to March 7, 1995.

### III. Significant Comments and Changes to the Proposed Rulemaking

Seven comment letters were received from the proposal rulemaking. The major comments and responses are summarized in this preamble.

Three comments believe that ASTM D 5403–93 is not applicable to thin film UV cured coatings and inks. They noted that to meet the minimum sample size requirement of 0.2 grams, at the coatings recommended thickness, the substrate would be too large to weigh on normal laboratory balances. They requested that the method be modified to state this limitation.

The EPA agrees that the method should be modified to state that ASTM D 5403–93 is not applicable to thin film UV cured coatings and inks. For this method a thin film UV cured coating or ink is one which will not allow the tester to apply at least 0.2 g of coating to the substrate at the supplier recommended film thickness. Revisions have been made to add the equation used to determine if ASTM D 5403–93 is applicable. The revisions also include the requirement of a minimum size substrate before a coating can be classified thin film for this method.

One commenter requested that the cure test at 50 percent exposure and the oven drying portion of ASTM D 5403–93 be deleted from the proposed Method 24 amendments for UV cured coatings. The commenter believes that these steps should be deleted because they expose the cured coatings to conditions to which they would not normally be exposed and over estimate potential emissions.

The EPA does not agree with the commenter's argument that these steps over estimate potential emissions. The purpose of the cure test is to ensure that the coating is properly cured before being placed in the oven. If the coating is not properly cured before being placed in the oven, the emissions will be biased high. The purpose of placing the cured coating in the oven is to determine the VOC emissions that will be emitted over time. Even after a coating is cured under normal procedures, VOC are released during the life time of the coating.

Two commenters were concerned that EPA looks at this modification to Method 24 as a complete ''fix it'' for the test method. They both noted section 1.4 of ASTM D 5403–93 which states that the method may not be applicable to radiation curable materials wherein the volatile material is water.

The EPA is not trying to imply that this modification makes Method 24 perfect. The EPA recognizes the limitations of ASTM D 5403–93 as stated in Section 1 of the method and also its limitations with respect to thin film radiation cured coating as previously discussed in this preamble. However, Method 24 is the best method currently available for determining the VOC content of coatings and inks. The EPA is always investigating new ways to improve its current test methods including Method 24.

### IV. Administrative Requirements

*A. Docket*

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principle purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials).

[Section 307(d)(7)(A)].

*B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this 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 obligation of recipients thereof; or

(4) raise novel legal 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 not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

*C. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Section 204 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select form those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted. Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

*E. Paperwork Reduction Act*

This rule does not change any information collection requirements subject to Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 60**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Surface coating of metal furniture, Automotive and light duty truck surface coating operations, Graphic arts industry publications rotogravure printing, Pressure sensitive tape and label surface coating, Industrial surface coating, Large appliances, Metal coil surface coating, Beverage can surface coating industry, Flexible vinyl and urethane coating and printing, Plastic parts for business machine coatings industry, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 23, 1995.

**Carol M. Browner,**

*Administrator.*

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7601.

2. In § 60.17 of Subpart A, by adding a paragraph (a)(63) to read as follows:

**§ 60.17 Incorporation by reference.**

* * * * *

(a) * * *

(63) ASTM D 5403–93 Standard Test Methods for Volatile Content of Radiation Curable Materials. IBR approved September 11, 1995 for Method 24 of Appendix A.

* * * * *

3. In Method 24 of Appendix A, Section 3.1 is amended by removing the words ''For all other coatings analyzed as follows'':

4. In Method 24 of Appendix A, Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7 are redesignated as Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, respectively.

5. In Method 24 of Appendix A, Equations 24–1 through 24–4 are redesignated as Equations 24–2 through 24–5, respectively.

6. In Method 24 of Appendix A, newly redesignated Section 3.8.1, last sentence, ''Section 3.4'' is revised to read ''Section 3.5''.

7. In Method 24 of Appendix A, newly redesignated Section 3.8.2, second sentence, ''Section 3.3'' is revised to read ''Section 3.4''.

8. In Method 24 of Appendix A, newly redesignated Section 3.8.2, third sentence, ''Section 3.4'' is revised to read ''Section 3.5''.

9. In Method 24 of Appendix A, newly redesignated Section 3.8.2.4, last sentence, ''Equation 24–1'' is revised to read ''Equation 24–2''.

10. In Method 24 of Appendix A, Sections 2.6, 3.2 and 3.9 are added to read as follows:

* * * * *

2. * * *

2.6 ASTM D 5403–93 Standard Test Methods for Volatile Content of Radiation Curable Materials (incorporated by reference—see § 60.17).

* * * * *

3.2 Non Thin-film Ultraviolet Radiation-cured Coating. To determine volatile content of non thin-film ultraviolet radiation-cured (UV radiation-cured) coatings, follow the procedures in Section 3.9. Determine water content, density and solids content of the UV-cured coatings according to Sections 3.4, 3.5, and 3.6, respectively. The UV-cured coatings are coatings which contain unreacted monomers that are polymerized by exposure to ultraviolet light. To determine if a coating or ink can be classified as a thin-film UV cured coating or ink, use the following equation:

$C=F\ A\ D$ Eq. 24–1

Where:

A=Area of substrate, in $^2$, cm $^2$.

C=Amount of coating or ink added to the substrate, g.

D=Density of coating or ink, g/in $^3$ (g/cm $^3$)

F=Manufacturer's recommended film thickness, in (cm).

If C is less than 0.2 g and A is greater than or equal to 35 in$^2$ (225 cm$^2$) then the coating or ink is considered a thin-film UV radiation-cured coating for determining applicability of ASTM D 5403–93.

**Note:** As noted in Section 1.4 of ASTM D 5403–93, this method may not be applicable to radiation curable materials wherein the volatile material is water. For all other coatings not covered by Sections 3.1 or 3.2 analyze as follows:

* * * * *

3.9 UV-cured Coating's Volatile Matter Content. Use the procedure in ASTM D 5403–93 (incorporated by reference—see § 60.17) to determine the volatile matter content of the coating except the curing test described in NOTE 2 of ASTM D 5403–93 is required.

* * * * *

[FR Doc. 95–21527 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 81

**[CT–22–1–7078a; A–1–FRL–5271–5]**

## Clean Air Act Promulgation of Reclassification of $PM_{10}$ Nonattainment Areas—Connecticut; Approval of 1–Year Extension of Attainment Date for New Haven

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is fully approving Connecticut's request for a 1-year extension of the attainment date for the New Haven PM10 nonattainment area. This action is based on monitored air quality data for the national ambient air quality standard for PM10 during the years 1992–94. This action is being taken under the Clean Air Act.

**DATES:** This final rule is effective November 13, 1995, unless notice is received by October 11, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Building (AAA), Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, (617) 565–4982.

**SUPPLEMENTARY INFORMATION:**

### Background

*Clean Air Act Requirements and EPA Actions Concerning Designation and Classification*

On the date of enactment of the Clean Air Act Amendments of 1990 (herein after referred to as ''the Act''), PM10 areas meeting the qualifications of § 107(d)(4)(B) of the Act were designated nonattainment by operation of law. [See generally, 42 USC section 7407(d)(4)(B).] These areas included all former Group I areas and any other areas violating the PM10 standards prior to January 1, 1989. On October 31, 1990 (55 FR 45799), EPA redefined a Group I area for Connecticut as the City of New Haven; the remainder of the state was designated as Group III. Subsequently, after enactment of the Act on November 15, 1990, New Haven was designated moderate nonattainment for PM10 in 56 FR 11101 (March 15, 1991). All other areas not designated nonattainment at enactment were designated unclassifiable.

States containing areas which were designated as moderate nonattainment by operation of law under § 107(d)(4)(B) were required to develop and submit SIPs to provide for the attainment of the PM10 NAAQS. Under § 189(a)(2), those SIP revisions were to be submitted within 1 year of enactment of the Act (November 15, 1991). The SIP revisions were to provide for implementation of reasonable available control measures/technology (RACM/RACT) by December 10, 1993 and attainment of the PM10 NAAQS by December 31, 1994.

*Reclassification as Serious Nonattainment*

EPA has the responsibility, under §§ 179(c) and 188(b)(2) of the Act, of determining within 6 months after December 31, 1994 whether initial moderate PM10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment date,'' and § 188(b)(2) is consistent with this requirement. EPA will make the determinations of whether an area's air quality is meeting the PM10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). This data will be reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR Part 50, Appendix K.

According to Appendix K, attainment of the annual PM10 standard is achieved when the annual arithmetic mean PM10 concentration is equal to or less than 50 μg/m$^3$. Attainment of the 24-hour standard is determined by calculating the expected number of exceedances of the 150 μg/m$^3$ limit per year. The 24-hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of clean air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM10. A complete year of air quality data, as referred to in 40 CFR Part 50, Appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under § 188(b)(2) a moderate area shall be reclassified as serious by operation of law after the statutory attainment date if the Administrator determines that the area has failed to attain the NAAQS. Under § 188(b)(2)(B) of the Act, the EPA must publish a notice in the **Federal Register** identifying those areas which failed to attain the standard and must be reclassified as serious by operation of law.

*Application for a 1-year Extension of the Attainment Date*

If the State does not have the necessary number of consecutive clean years of data to show attainment of the NAAQS, a State may apply for an extension of the attainment date. Pursuant to § 188(d) of the Act, a State may apply for and EPA may grant a 1-year extension of the attainment date if the State has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than 1 exceedance of the 24-hour PM10 standard in the year preceding the extension year, and the annual mean concentration of PM10 in the area for such year is less than or equal to the standard. If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or does not qualify for an attainment date extension, the area will be reclassified as serious by operation of law.

Section 188(d) of the Act provides that the Administrator ''may'' extend

the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas. In exercising this discretionary authority for PM10 nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM10 planning obligations for the area. In order to determine whether the State has substantially met these planning requirements the EPA will review the States application for the attainment date extension to determine whether the State has: (1) Adopted and substantially implemented control measures submitted to address the requirement for implementing RACM/RACT in the moderate nonattainment area; and (2) that reasonable further progress is being met for the area. RFP for PM10 nonattainment areas is determined to be linear emissions reductions made on an annual basis which will provide progress toward the eventual attainment of the NAAQS in the area.

If an extension is granted, at the end of the extension year, EPA will again determine whether the area has attained the PM10 NAAQS. If the State still does not have 3 consecutive years of clean air quality data, it may apply for a second 1-year extension of the attainment date. In order to qualify for the second 1-year extension of the attainment date, the State must satisfy the same requirements listed above for the first extension. In addition, EPA will consider the State's PM10 planning progress for the area in a manner similar to its evaluation of the first extension request. However, EPA may grant no more than two 1-year extensions of the attainment date to a single nonattainment area. [See § 188(d) of the Act].

## Summary of Connecticut's Extension Request

On March 31, 1995, the Connecticut Department of Environmental Protection (Connecticut DEP) submitted a request for a 1-year extension of the attainment date for the New Haven initial moderate PM10 nonattainment area.

EPA's Air Quality Strategies and Standards Division (AQSSD) has prepared a guidance titled ''Criteria for Granting 1–Year Nonattainment Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones'' (November 14, 1994 memorandum from AQSSD Director Sally Shaver) which outlines how to assess the adequacy of requests for a 1-year extension of the attainment date. The rationale for EPA's approval action are detailed in the Technical Support Document (TSD), dated June 13, 1995. In summary, Connecticut has fulfilled the specific elements of that guidance as follows:

A. Connecticut is implementing the EPA-approved PM10 SIP.

B. New Haven has monitored no more than 1 exceedance during 1994, the year preceding the extension year.[1]

C. Connecticut has demonstrated that RACT/RACM, embodied in 7 consent orders, have been adopted and submitted in the form of a SIP revision and are being implemented for New Haven. Furthermore, real emissions reductions have been achieved.[2]

Connecticut's extension request states that indeed the area recorded no exceedances of the PM10 NAAQS in 1994, and is complying with the applicable state implementation plan. For further details regarding Connecticut's extension request and how it meets EPA's requirements, the reader should refer to the TSD dated June 13, 1995.

## Final Action

EPA is approving an extension of the PM10 attainment date for New Haven, Connecticut to December 31, 1995.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Under Executive Order 12866, 58 FR 51735 (October 4, 1993) EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''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.''

The Agency has determined that the attainment date extension proposed today would result in none of the effects identified in section 3(f). Attainment date extensions under § 188(d) of the Act do not impose any new requirements on any sectors of the economy; nor do they result in a materially adverse impact on State, local, or tribal governments or communities.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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.

Under §§ 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with

[1] A review of the PM10 air quality data for New Haven shows air quality monitors for this area monitored 4 exceedances of the 24-hour PM10 NAAQS during the 3-year period from 1992 to 1994. All exceedances occurred in 1993 at the Yankee Gas monitor site (AIRS Site ID 09–009–0021). The area did not have any exceedances of the PM10 NAAQS in 1994.

[2] Section 189(c) requires that Part D SIPs include quantitative milestones to document RFP towards attainment. Every 3 years until EPA redesignates an area to attainment, States must report on whether milestones have been met. Connecticut's SIP commits CT DEP to submit quantitative milestone and RFP reports to EPA every 3 years. For initial moderate PM10 nonattainment areas, the emissions reductions made between SIP submittal and the attainment date will satisfy the first quantitative milestone. (See General Preamble 57 FR 13539.) Since EPA believes it is reasonable to key the first milestone to the SIP revision containing control measures which will result in emission reductions and since the PM10 attainment date was less than 3 years from the actual submittal date of CT DEP's SIP revision, CT DEP submitted—and EPA is accepting—the emissions reductions associated with the New Haven PM10 Attainment Plan SIP revision (submitted to EPA on March 22, 1994) as meeting RFP and the first quantitative milestone for New Haven. (See TSD dated March 27, 1995.)

proposed or final regulations that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined, as discussed earlier, that the finding that is the subject of this final action of failure to attain and grant a 1-year extension does not impose any federal intergovernment mandate, as defined in section 101 of the Unfunded Mandates Act. A finding that an area has failed to attain and should be granted a 1-year extension of the attainment date consists of factual determinations based upon air quality considerations and the area's compliance with certain prior requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Extensions of attainment dates under § 188(d) 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 EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 USC § 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the 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. A future notice will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

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

Under § 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 November 13, 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 § 307(b)(2).]

**List of Subjects in 40 CFR Part 81**

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

**Note:** Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 10, 1995.

**John P. DeVillars,**

*Regional Administrator, EPA-New England.*

[FR Doc. 95–22132 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1803, 1815, and 1852

## Addition of Coverage to NASA FAR Supplement Coverage on NASA Ombudsman Program

**AGENCY:** Office of Procurement, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations by adding coverage concerning NASA's Ombudsman Program. The Ombudsman Program will improve communications with interested parties. This rule sets forth a clause for identification of the NASA and installation ombudsmen to be included in solicitations and contracts. The clause also serves as the basis for a statement to be included in ''Commerce Business Daily'' announcements. In addition, the rule amends NASA's coverage on procurement integrity to include the NASA and installation ombudsmen as individuals authorized access to proprietary and source selection information.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Le Cren, (202) 358–0444.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 25, 1995, a proposed rule to amend the NFS to add coverage on NASA's Ombudsman Program was published in the **Federal Register** (60 FR 27710) for comment. All comments were reviewed. A change was made as a result of the comments to substitute the word ''adjudication'' for ''arbitration'' in the clause at 1852.7002. That change was made as the term ''arbitration'' could be read as being too restrictive in its meaning. In addition, the word ''Selection,'' appearing in the clause at 1852.215–84 was replaced with ''Evaluation.'' That change is due to ''Selection'' being incorrect when the intention was to refer to NASA ''Source Evaluation Board.''

### Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

### List of Subjects in 48 CFR Parts 1803, 1815, and 1852

Government procurement.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR parts 1803, 1815, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1803, 1815, and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. In section 1803.104–5, the introductory text of paragraph (c) is revised and (c)(11) is added to read as follows:

**1803.104–5 Disclosure, protection, and marking of proprietary and source selection information.**

* * * * *

(c) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

* * * * *

(11) Duly designated ombudsman.

* * * * *

## PART 1815—CONTRACTING BY NEGOTIATION

3. Subpart 1815.70 is added to read as follows:

### Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Commerce Business Daily announcements, solicitations and contracts.

### 1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NMI 1210.3, NASA Ombudsman Program.

### 1815.7002 Commerce Business Daily announcements, solicitations and contracts.

The contracting officer shall include a statement similar to that contained in the clause at 1852.215–84, Ombudsman, in Commerce Business Daily announcements of competitive procurements. Also, a clause substantially the same as the one at 1852.215–84 shall be included in Section L of solicitations, including draft solicitations, and in all contracts.

4. Section 1852.215–84 is added to read as follows:

### 1852.215–84 Ombudsman.

As prescribed in 1815.7002, insert the following clause:

**Ombudsman**

(October 1995)

An ombudsman has been appointed to hear concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. The purpose of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official, but to communicate concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel and to work to resolve them. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to call the installation ombudsman _____ [Insert name] at _____ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman _____ [Insert name] at _____ [Insert telephone number].

(End of Clause)

[FR Doc. 95–22364 Filed 9–8–95; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 642

**[Docket No. 940710–4292; I.D. 090195E]**

## Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure of a commercial fishery for king mackerel.

**SUMMARY:** NMFS closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. This closure is necessary to protect the overfished Gulf king mackerel resource.

**EFFECTIVE DATE:** September 5, 1995, through June 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1995, through June 30, 1996) set the commercial quota at 0.77 million pounds (0.35 million kg) for the western zone.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a document in the **Federal Register**. NMFS has determined that the commercial quota of 0.77 million pounds (0.35 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on September 4, 1995. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, September 5, 1995, through June 30, 1996, the end of the fishing year. The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31′06″ W. long.).

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bag limit set forth in § 642.24(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

### Classification

This action is taken under 50 CFR 642.26(a) and is exempt from review under E.O. 12866.

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

Dated: September 5, 1995.

**Richard W. Surdi,**

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

[FR Doc. 95–22401 Filed 9–6–95; 10:44 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 60, No. 175
Monday, September 11, 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

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. 93–119–1]**

### Importation of Citrus Fruits from Australia

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Fruits and Vegetables regulations to allow oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia to be imported into the United States. We are taking this action because it appears that the citrus may be imported without presenting a significant risk of introducing injurious insects into the United States. Adoption of this proposed rule would provide importers and consumers in the United States with an additional source of citrus fruit.

**DATES:** Consideration will be given only to comments received on or before October 11, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93–119–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–119–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank E. Cooper or Mr. Peter M. Grosser, Senior Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

**SUPPLEMENTARY INFORMATION:**

## Background

The Fruits and Vegetables regulations in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations'') prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. Paragraphs (e) and (f) of § 319.56–2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects.

The regulations also provide, among other things, that all importations of fruits and vegetables, as a condition of entry, shall be subject to inspection or treatment, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector (see § 319.56–6). Section 319.56–6 also provides that shipments of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous pests and an inspector determines that the pests cannot be eliminated by disinfection or treatment.

Section 319.56–2v contains provisions for importing citrus fruit from Australia. Currently, § 319.56–2v provides for imports of citrus from only specified subdivisions of the Riverland district. Citrus fruit may be imported from the Riverland district without treatment for fruit flies if the area remains free of fruit flies. Importation of citrus fruit from the Riverland district could continue in the event of a fruit fly infestation if the fruit undergoes cold treatment and meets all other applicable requirements of the regulations. Entry of citrus into the United States from the Riverland district of Australia would be denied if a fruit fly destructive of citrus should be detected in the Riverland district, and there is no authorized cold treatment for this fruit fly.

The Australian Quarantine and Inspection Service (AQIS) has requested that we consider allowing the entry of oranges (*Citrus sinensis* [Osbeck]); lemons (*C. limonia* [Osbeck] and *meyeri* [Tanaka]); limes (*C. aurantiifolia* [Swingle] and *latiifolia* [Tanaka]; mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* [Blanco]); and grapefruit (*C. paradisi* [MacFad.]) from the Riverina and Sunraysia districts of Australia, as well. The Riverina district of New South Wales is comprised of (1) the shire of Carrathool; and (2) the Murrumbidgee Irrigation Area, which is within the administrative boundaries of the city of Griffith and the shires of Leeton, Narrendera, and Murrumbidgee. The Sunraysia district is comprised of the shires of Wentworth and Balranald in New South Wales and the shires of Mildura, Swan Hill, Wakool, and Kerang, the cities of Mildura and Swan Hill, and the borough of Kerang in Victoria.

Both the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]) and the Queensland fruit fly (*Dacus tryoni* [Frogg]), insects injurious to citrus, are known to attack citrus in Australia. The Mediterranean fruit fly is not widely distributed in the United States, and the Queensland fruit fly does not occur in the United States. If introduced into the United States, these pests would represent a serious threat to domestic fruit crops. AQIS has conducted extensive trapping surveys [1] that show the Riverina and Sunraysia districts to be free of all types of fruit flies that attack citrus. Specifically, we have determined that:

(1) Within the past 12 months, AQIS has conducted trapping surveys that show the Riverina and Sunraysia districts to be free from all fruit flies that attack citrus;

(2) AQIS has adopted and is enforcing requirements to prevent the introduction of fruit flies destructive of citrus into the Riverina and Sunraysia districts; and

(3) AQIS has submitted to the Administrator of the Animal and Plant Health Inspection Service (APHIS) detailed procedures for the conduct of pest surveys in the Riverina and Sunraysia districts, and for the enforcement of requirements to exclude fruit flies from these districts.

The Administrator of APHIS has determined that the survey methods

[1] Information regarding how the surveys were conducted can be obtained from the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

employed by AQIS are adequate to detect infestations of the Mediterranean fruit fly, the Queensland fruit fly, and other fruit flies destructive of citrus. The Administrator has also determined that the requirements adopted and enforced by AQIS to prevent the introduction of injurious insects into the Riverina and Sunraysia districts of Australia are at least equivalent to those requirements imposed in the United States to prevent the introduction and interstate spread of injurious insects. Therefore, we are proposing to amend § 319.56–2v to allow the importation of oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia without treatment for fruit flies, provided that these districts remain free of fruit flies that attack citrus.

If fruit flies were detected in a district, we would continue to allow oranges, lemons, limes, mandarins, and grapefruit to be imported from that district, subject to the completion of an APHIS-authorized cold treatment for that fruit fly, and to all other applicable requirements of the regulations. This provision would allow importers and exporters to respond to suddenly changed circumstances, such as a Mediterranean fruit fly or Queensland fruit fly infestation, without unnecessarily interrupting fruit shipments or creating a significant risk of introducing fruit flies into the United States.

However, if no APHIS-approved treatment is available for the detected fruit fly, the importation of citrus fruit from the district in which the fruit fly was detected would be prohibited. These are the same provisions currently in the regulations for citrus imported into the United States from the Riverland district of Australia.

In the event that citrus from the Riverina or Sunraysia district of Australia requires treatment for fruit flies, entry of the citrus into the United States would be limited to the port of Wilmington, NC, and North Atlantic ports north of and including Baltimore, MD, if treatment for fruit flies is to be completed in the United States. The climatic conditions in the northeastern United States would ensure that any injurious pests accompanying a shipment of citrus prior to treatment would not pose a risk in that area. Special precautions at the port of Wilmington, NC, mitigate risk there (see § 319.56–2d(b)(5)(iv)). Entry would be allowed through any port if treatment has been completed prior to arrival in the United States.

Lastly, we propose to amend § 319.56–2v by removing a reference to cold treatment authorized under § 319.56–2d and replacing it with a reference to cold treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. Cold treatment schedules no longer appear in § 319.56–2d, but are in the PPQ Treatment Manual, and § 319.56–2d currently refers readers to the PPQ Treatment Manual for the details of cold treatment.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Fruits and Vegetables regulations by allowing the importation of oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia.

According to a USDA estimate, the total U.S. production of citrus fruits was approximately 11.172 million metric tons in 1992. Approximately 1.1 million metric tons of citrus fruits were exported from the United States in 1992, with about 9,741 metric tons exported to Australia.

According to an estimate offered by the Australian Office of the Counsellor, Australia produced approximately 592,000 metric tons of citrus fruits in 1992. Citrus production in Australia is oriented primarily to domestic consumption, with exports accounting for approximately 79,000 metric tons, or only about 13 percent of the total production, in 1992. Of the total quantity exported, 2,517 metric tons (about 3 percent) went to the United States.

The U.S. entities who would be most affected by this proposed rule would include citrus fruit producers, exporters, and importers. It is estimated that 93 percent of the U.S. farms that produce citrus fruit, approximately 21,225 farms in all, qualify as small businesses. While this proposed rule would provide an additional supply of citrus fruit in the United States, domestic citrus fruit producers, including small entities, could expect a very insignificant decline in the price of citrus fruits. Due to the seasonal difference in availability, U.S. and Australian producers would not be in direct competition for the domestic citrus market. Both exporters and importers would be expected to benefit from the proposed rule. The projected benefit to exporters may accrue from the expanded export opportunities that could result from a favorable reciprocal trade treatment given by Australia. Importers may also benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is lowest. However, the economic benefits to importers and exporters are not expected to be significant.

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

**Executive Order 12778**

This proposed rule would allow oranges, lemons, limes, mandarins, and grapefruit to be imported into the United States from the Riverina and Sunraysia districts of Australia. If this proposed rule is adopted, State and local laws and regulations regarding citrus fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh citrus fruits are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects in 7 CFR Part 319**

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

Accordingly, 7 CFR part 319 would be amended to read as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 319.56–2v would be revised to read as follows:

**§ 319.56–2v Conditions governing the entry of citrus from Australia.**

(a) The Administrator has determined that the irrigated horticultural areas within the following districts of Australia meet the criteria of § 319.56–2 (e) and (f) with regard to the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), and other fruit flies destructive of citrus:

(1) The Riverland district of South Australia, defined as the county of Hamley and the geographical subdivisions, called ''hundreds,'' of Bookpurnong, Cadell, Gordon, Holder, Katarapko, Loveday, Markaranka, Morook, Murtho, Parcoola, Paringa, Pooginook, Pyap, Stuart, and Waikerie;

(2) The Riverina district of New South Wales, defined as:

(i) The shire of Carrathool; and

(ii) The Murrumbidgee Irrigation Area, which is within the administrative boundaries of the city of Griffith and the shires of Leeton, Narrendera, and Murrumbidgee; and

(3) The Sunraysia district, defined as the shires of Wentworth and Balranald in New South Wales and the shires of Mildura, Swan Hill, Wakool, and Kerang, the cities of Mildura and Swan Hill, and the borough of Kerang in Victoria.

(b) Oranges (*Citrus sinensis* [Osbeck]); lemons (*C. limonia* [Osbeck] and *meyeri* [Tanaka]); limes (*C. aurantiifolia* [Swingle] and *latiifolia* [Tanaka]); mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* [Blanco]); and grapefruit (*C. paradisi* [MacFad.]) may be imported from the Riverland, Riverina, and Sunraysia districts without treatment for fruit flies, subject to paragraph (c) of this section and all other applicable requirements of this subpart.

(c) If surveys conducted in accordance with § 319.56–2d(f) detect, in a district listed in paragraph (a) of this section, the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), or other fruit flies, citrus fruit from that district will remain eligible for importation into the United States in accordance with § 319.56–2(e)(2), provided the fruit undergoes cold treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter, and provided the fruit meets all other applicable requirements of this subpart. Entry is limited to ports listed in § 319.56–2d(b)(1) of this subpart if the treatment is to be completed in the United States. Entry may be through any port if the treatment has been completed in Australia or in transit to the United States. If no approved treatment for the detected fruit fly appears in the PPQ Treatment Manual, importation of citrus from the affected district or districts is prohibited.

Done in Washington, DC, this 1st day of September 1995.

**Terry L. Medley,**

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

[FR Doc. 95–22406 Filed 9–8–95; 8:45 am]

BILLING CODE 3410–34–P

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## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 613, 614, 618, 619, and 626

**RIN 3052–AB10**

## Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Definitions; Nondiscrimination in Lending

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) proposes to amend the current regulations that govern eligibility and purposes for financing from Farm Credit System (Farm Credit, FCS, or System) banks and associations. This proposal would incorporate recent statutory amendments that govern eligibility and loan purposes from Farm Credit banks that operate under title III of the Farm Credit Act of 1971, as amended (Act). The proposed rule would also implement recently enacted sections 3.1(11)(B) and 4.18A of the Act, which grant Farm Credit banks and associations authorities to participate with non-System lenders in loans to similar entities. At the same time, the FCA proposes to eliminate restrictions in the current regulations that are not required by the Act. The FCA proposes to substantially reorganize these regulations in order to enhance their clarity. The FCA also proposes several technical amendments to other regulations so they conform with this proposal. The proposed rule would relocate the nondiscrimination in lending regulations to a new part without change.

**DATES:** Comments should be received on or before December 11, 1995.

**ADDRESSES:** Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for review by interested parties in the Office of Examination, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

John J. Hays, Policy Analyst, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:**

### I. General

The FCA proposes to amend its regulations in part 613 to eliminate unnecessary regulatory restrictions and implement statutory changes. Several recent amendments to sections 3.7 and 3.8 of the Act expand eligibility and purposes of financing for borrowers from BCs and ACBs. Two new statutory provisions were enacted in 1992 and 1994, which authorize Farm Credit banks and associations to participate with non-System lenders in loans to borrowers who are functionally similar but otherwise ineligible for direct FCS financing when the loans are for purposes that are within the System's scope of financing (sections 3.1(11)(B) and 4.18A of the Act).

The FCA's approach in crafting new eligibility regulations is guided by the Board's Policy Statement on Regulatory Philosophy (Policy Statement).[1] Pursuant to this Policy Statement, the FCA is committed to adopting regulations only as necessary to: (1) Implement or interpret the law; or (2) promote the safe and sound operations of System institutions. Consistent with the Policy Statement, the FCA proposes to remove regulatory provisions that prescribe operational procedures, to simplify and clarify the regulations wherever possible, and to delete existing regulatory restrictions that are not imposed by law or necessary to interpret the law or promote safety and soundness. The FCA's proposal should permit FCS institutions to more

[1] *See* 60 FR 26034 (May 16, 1995).

effectively meet the credit needs of agricultural and aquatic producers, farm-related businesses, rural homeowners, cooperatives, and rural utilities in today's economic environment. Additionally, it should help stimulate economic development in rural areas by increasing the availability of affordable credit to eligible borrowers.

The FCA believes that removing non-statutory restrictions in these regulations will enable the FCS to compete appropriately in agricultural and rural credit markets and ultimately enhance its safety and soundness. In this context, the FCA's proposal will enable the FCS to fulfill its statutory mission (as stated in the preamble to the Act) to provide: (1) ''A farmer-owned cooperative System of making credit available to farmers, ranchers, and their cooperatives;'' and (2) ''an adequate and flexible flow of money into rural areas.''

## II. Financing Under Titles I and II of the Act

The FCA proposes new eligibility regulations for Farm Credit banks and associations that operate under titles I and II of the Act. These rules are designed to clarify current eligibility criteria and the scope or purposes for which System financing may be obtained. The FCA's proposal eliminates provisions in existing subparts A and B of part 613 that prescribe management practices and procedures or unnecessarily restrict the eligibility of persons authorized to borrow under the Act.

The FCA also proposes to reorganize and clarify these regulations so they can be better utilized by the FCS, the FCA, and other interested parties. The existing regulations in subparts A and B would be replaced by four new regulations in subpart A of part 613, which would authorize System banks and associations to extend credit to the following classes of eligible borrowers: (1) Bona fide farmers, ranchers, and producers or harvesters of aquatic products; (2) processing or marketing operators; (3) farm-related businesses that provide services to farmers and ranchers; and (4) rural homeowners. An explanation of the proposed amendments follows.

### *A. Bona Fide Farmers, Ranchers, and Aquatic Producers and Harvesters*

Sections 1.9(1) and 2.4(a)(1) of the Act state that ''bona fide farmers, ranchers, and producers or harvesters of aquatic products'' are eligible to borrow from Farm Credit banks and associations that operate under titles I or II of the Act, respectively. The term ''bona fide farmer, rancher, or producer or harvester of aquatic products'' is not defined in either the Act or its legislative history.

The FCA proposes to adopt a single regulation, § 613.3000, that will determine eligibility for financing for loans made to farmers, ranchers, and aquatic producers and harvesters. As a result of this consolidation, the FCA proposes to delete existing §§ 613.3000, 613.3005, 613.3010, and 613.3020.

Proposed § 613.3000(a)(2) defines a bona fide farmer, rancher, and aquatic producer as an individual or legal entity that either: (1) Produces agricultural products or produces or harvests aquatic products to generate income; or (2) owns agricultural land. The definition in the proposed regulation does not represent a significant departure from the existing regulations. The FCA proposes to combine the separate definitions of farmers and ranchers in existing § 613.3010(a) and aquatic producers and harvesters in § 613.3010(d) into a single provision, without substantive change. Agricultural land is defined by proposed § 613.3000(a)(1) as ''land that is devoted to or available for the production of agricultural or aquatic products.'' This proposed definition is more streamlined and would replace current § 619.9025.

#### 1. Elimination of Regulatory Restrictions on Eligibility

Although the regulatory definition of ''bona fide farmer'' remains essentially unchanged, this proposal would reduce or eliminate restrictions in the current regulations on financing to three types of farmers: part-time farmers, certain legal entities, and certain foreign nationals. The proposed regulation, consistent with the Act, eliminates all distinctions among farmers regarding their eligibility for agricultural and aquatic financing. The FCA proposes to place limits on financing that eligible borrowers may obtain for certain purposes. For the reasons explained below, limitations on financing of non-agricultural credit needs have been retained.

#### A. Part-time Farmers

The FCA proposes to eliminate any distinction between full-time and part-time farmers, ranchers, and aquatic producers and harvesters. Although the eligibility provisions in titles I and II of the Act do not distinguish full-time from part-time producers, current § 613.3005(a) establishes different lending policies and objectives for full-time and part-time producers who are eligible to borrow. The existing regulation requires Farm Credit Banks (FCBs), agricultural credit banks (ACBs), and their affiliated associations to provide: (1) ''Full credit, to the extent of creditworthiness, to full-time bona fide farmers;'' (2) ''conservative credit'' to part-time farmers for agricultural enterprises; and (3) ''restricted credit for other credit requirements as needed to ensure a sound credit package.''

System institutions have noted that § 613.3005 is more restrictive than the Act. Further, uniform and consistent application throughout the FCS has been difficult to achieve. For these reasons, the FCA proposes to repeal § 613.3005 (a) and (c) and replace it with a new § 613.3000, which will be clear, concise, and easier to implement.

Proposed § 613.3000 does not differentiate between full-time and part-time agricultural and aquatic producers. Moreover, the evolution of agriculture has made part-time producers an increasingly important sector of the agricultural industry and rural America,[2] and existing regulations restricting the scope of lending to them may not serve the purposes of the Act, which does not distinguish between full-time and part-time farmers. The applicant's creditworthiness, not eligibility criteria, would determine the availability of System loans to part-time farmers, as it does with full-time farmers. The broad prescriptions for operational policies and procedures of current § 613.3005(c), which were designed to keep the focus on agricultural lending would be replaced with limitations on the amount of other business credit needs of farmers that could be financed. Although the FCA is removing the policy and procedure requirements of § 613.3005(c), the FCA believes that FCS banks and associations should continue to adopt and implement sound management practices and policies to guide their operations.

#### B. Legal Entities

The FCA's proposed regulation also removes most distinctions between individuals and legal entities. No restriction on lending to legal entities appears in the Act, and a review of the legislative history of the Act reveals that Congress, over an extended period of time, deleted all statutory restrictions on loans to legal entities by title I and II institutions or their predecessors. The FCA proposes to update its regulations to conform with these changes.

[2] A recent report by the United States Department of Agriculture, entitled Rural Conditions and Trends, Spring 1995, reported 88 percent of a farm household's income comes from sources off the farm, with farm (income) accounting for the rest.

Under an existing regulation, § 613.3020(b), a legal entity is ineligible for loans from Farm Credit banks and associations unless more than 50 percent of: (1) Its equity or voting shares are owned by individuals conducting an agricultural or aquatic operation; (2) the value of its assets are related to the production of agricultural or aquatic commodities; or (3) its income is derived from agricultural or aquatic activities. Furthermore, the current regulation imposes additional requirements on a legal entity that is owned or controlled by another legal entity that is an ineligible borrower.

In 1993, the FCA solicited public comment on the burdens that existing regulations impose on System institutions. See 58 FR 34003, June 23, 1993. Several commenters responded that existing § 613.3020(b) limits the System's ability to finance legal entities despite the removal of such restrictions in the Act. Some of the comment letters also noted that the current regulation favors individual borrowers over legal entities.

After considering these comments, the FCA proposes to adopt a regulatory approach that equalizes the treatment of legal entities and individual borrowers with respect to financing their agricultural and aquatic needs. Section 1.1(b) of the Act states that one of the objectives of the FCS is to ''be responsive to the credit needs of all types of agricultural producers having a basis for credit.'' Accordingly, the FCA concludes that the eligibility requirements for System institutions should not influence any borrower's decision about whether to farm, ranch, or fish in an individual capacity or as a legal entity.

The FCA proposes to eliminate the requirements in current § 613.3020(b) that most of the owners, assets, or income of an eligible legal entity be related to an agricultural or aquatic enterprise. Rather, any legal entity that engages in agricultural or aquatic production to generate income or owns agricultural land would become an eligible System borrower under proposed § 613.3000(a)(2). The FCA's proposal does not preempt State laws that prohibit or otherwise restrict legal entities (other than closely held family farm corporations) from owning agricultural land or conducting a farming, ranching, or aquatic operation.

Under the proposed regulation, entities that are eligible under title III of the Act would not qualify as legal entities for purposes of financing under titles I or II of the Act. The FCA is aware that some cooperatives now qualify for financing from FCBs and associations, as well as from BCs and ACBs. In fact, some cooperatives have existing financial relationships with associations. Although the FCA does not desire to interfere with existing business relationships, it is concerned that expanded competition within the FCS could be detrimental. The FCA invites comments on whether this approach is appropriate and on other alternatives for addressing this concern.

C. Nationality of the Borrower

Current FCA regulations permit System lenders to provide agricultural financing to foreign nationals only if they are permanent residents of the United States. This restriction derives from language in section 1.1(a) of the Act, which states:

> The farmer-owned cooperative Farm Credit System (is) designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them (and) their cooperatives.

The FCA has viewed this provision as a basis for limiting the ability of the System to lend to certain foreign nationals. Existing § 613.3010(c) states that only foreign nationals who are admitted into the United States for permanent residence pursuant to 8 U.S.C. 1101(a)(20) are eligible for System financing. Legal entities that are owned by foreign nationals who are permanent residents of the United States also qualify for System financing under this provision.

The FCA is aware that non-resident foreign nationals and legal entities owned by such persons have applied to FCS banks and associations for agricultural or aquatic loans. System institutions and members of Congress have made the Agency aware of applicants who own and operate farms or processing and marketing operations in the United States, but are ineligible for financing because they are not citizens or permanent residents. FCS banks and associations are currently required by current § 613.3010(c) to reject automatically the loan applications of such prospective borrowers solely on the basis of their nationality and residency status. Many FCS banks and associations state that the current regulation compels them to deny loans to otherwise creditworthy farmers, ranchers, and aquatic producers and harvesters who make significant contributions to American agriculture. Furthermore, existing § 613.3010 causes System lenders to forfeit to competitors profitable business opportunities with entities that are statutorily eligible to borrow from the System. Many FCS representatives and some members of Congress have questioned the FCA's decision to prohibit System institutions from financing those agricultural and aquatic producers who are non-resident foreign nationals or foreign national legal entities.

These comments have prompted the FCA to consider whether the existing regulation is unnecessarily restrictive. In considering these comments, the FCA examined the immigration and nationality laws of the United States. As a general rule, foreign nationals are allowed to enter the United States as either immigrants or non-immigrants. According to 8 U.S.C. 1101(a)(20), persons who are lawfully admitted for permanent residence in the United States have immigrant status. As noted earlier, agricultural or aquatic producers who are admitted into the United States as permanent residents are already eligible to borrow from System institutions.

Non-immigrants generally are defined as foreign nationals who do not intend to abandon their residence in their home countries and settle permanently in the Untied States. Certain categories of non-immigrants are allowed to conduct businesses and own property in the United States. For example, non-immigrant foreign nationals may enter the United States to conduct business as:

(1) Businesspersons under 8 U.S.C. 1101(a)(15)(B);

(2) Merchants or traders under 8 U.S.C. 1101(a)(15)(E); or

(3) Executives, managers, or specialists for a legal entity that employs them, pursuant to 8 U.S.C. 1101(a)(15)(L).

The proposed regulation would expand eligibility provisions to encompass all foreign nationals who are authorized by the laws of the United States to engage in agricultural or aquatic production or to own agricultural land in the United States. It would also cover domestic legal entities in which foreign nationals have an ownership interest. The FCA believes that this interpretation is consistent with section 1.1(a) of the Act and it provides FCS institutions with greater flexibility to finance bona fide farmers, ranchers, and aquatic producers and harvesters who actively contribute to the growth, productivity, and prosperity of domestic agriculture and the rural economy.

As a result of its consideration of this issue, the FCA proposes to amend its eligibility regulations to enable Farm Credit banks and associations to finance certain non-immigrant foreign nationals

who are bona fide farmers, ranchers, and aquatic producers or harvesters, as defined by proposed § 613.3000. More specifically, proposed § 613.3000 (a)(2) and (a)(3)(ii) would expand the definition of ''individual'' to include foreign nationals who have been admitted lawfully into the United States pursuant to any provision in 8 U.S.C. 1101(a)(15) that authorizes such individuals to own property or operate or manage businesses. This would permit such persons to qualify as a bona fide farmer, rancher, or aquatic producer or harvester if they are engaged in production or own agricultural land.

The proposed regulation would afford the same treatment to legal entities owned by citizens and permanent residents of the United States, or controlled by non-resident foreign nationals, provided that the entity is chartered domestically. The FCA observes, however, that certain foreign nationals and foreign national legal entities have registration and disclosure obligations under the Agricultural Foreign Investment Act of 1978 (AFIDA), 7 U.S.C. 3508, and its implementing regulation, 7 CFR Part 781. Because the Secretary of Agriculture is authorized by section 3 of AFIDA, 7 U.S.C. 3502, to impose civil penalties on non-resident foreign nationals and foreign national legal entities who fail to comply with these disclosure provisions, System institutions that lend to borrowers who are subject to the AFIDA should ensure that the borrowers have complied with its requirements. The FCA observes that the proposed regulation does not preempt State laws that prohibit or otherwise restrict non-resident foreign nationals and foreign national legal entities from owning agricultural land or conducting a farming, ranching, or aquatic operation within their jurisdiction.

The FCA notes that legal entities that are chartered by a foreign government or headquartered outside the United States are also covered by the AFIDA. The FCA seeks comment on whether foreign national legal entities that do not have a domestic subsidiary should be eligible for financing under the final regulation.

2. Limitations on Financing

The proposed regulations would impose no limitations on the System's ability to finance the agricultural and aquatic needs of farmers, ranchers, and aquatic producers. Proposed § 613.3000(c) would authorize FCS banks and associations to extend credit to all eligible borrowers for any agricultural or aquatic purpose, including refinancing pre-existing agricultural or aquatic debt.

Proposed § 613.3000(d) would enable eligible farmers, ranchers, and aquatic producers or harvesters to obtain System loans for their other credit needs with certain limitations. Sections 1.11(a) and 2.4(a) of the Act expressly authorize System banks and associations to finance the other credit needs of agricultural and aquatic producers. This statutory authority has existed since 1955,[3] when Congress originally acknowledged that farmers and ranchers often require credit for other ''sound and appropriate'' purposes so they can make ends meet and remain on the farm.[4] This longstanding Congressional policy is currently codified in § 613.3005(a).

The FCA proposes a regulatory approach that grants FCS banks and associations greater flexibility to finance the other credit needs of bona fide farmers, ranchers, and aquatic producers and harvesters, but simultaneously preserves the mission of System institutions as agricultural lenders. The proposed regulation removes the existing requirement that a borrower have an outstanding agricultural or aquatic loan in order to receive financing for other credit needs. Today, many agricultural and aquatic producers pursue non-farm business opportunities as a matter of economic survival. A Farm Credit System that is responsive to such other credit needs helps agricultural and aquatic producers to remain on their farms and ranches and in America's rural communities. Furthermore, System lenders fulfill their obligation to ''provide for an adequate and flexible flow of money into rural areas, and * * * to meet current and future rural credit needs'' when they finance certain non-farm businesses owned by farmers in rural areas. In this context, the Act expressly contemplates that Farm Credit banks and associations will contribute to economic development in rural areas by financing the other business needs of farmers, ranchers, and aquatic producers and harvesters.

Lending for farmers' other credit needs also enables FCBs, ACBs, and their affiliated associations to strengthen their viability by diversifying their loan portfolios. A strong and competitive Farm Credit System increases the availability of affordable credit in rural America. Lending for other domestic and business needs allows System banks and associations to offer a full array of quality credit services to farmers, ranchers, and aquatic producers and harvesters at competitive interest rates and to provide an incidental benefit to rural communities.

Because the primary mission of the FCS is to finance agriculture and aquaculture, the FCA's proposal would restrict loans for the other credit needs of System borrowers. In the FCA's opinion, the availability of credit for non-agricultural purposes should be proportionally related to the borrower's involvement in farming, ranching, or aquatic production or harvesting. For the reasons explained below, proposed § 613.3000(d) would grant borrowers who engage in agricultural or aquatic production (''farmer-producers'') greater access to the FCS for their other credit needs than it would grant to borrowers who are eligible only because they own agricultural land as an investment (''farmer-investors'') and non-resident foreign nationals. The FCA's proposal is designed to permit family farm corporations and other legal entities that are closely held by eligible farmers, ranchers, and aquatic producers and harvesters to finance their other credit needs at an FCS bank or association. However, the proposed regulation would authorize System banks and associations to finance only the agricultural or aquatic needs of publicly traded corporations and conglomerates with significant assets unrelated to agriculture.

Proposed § 613.3000(d)(1) would enable farmer-producers to obtain System financing for their housing and other domestic needs without restriction (other than their creditworthiness). Proposed § 613.3000(d)(1) also allows farmer-producers to obtain limited System financing for their other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets. This regulatory approach would ensure that the amount of financing that farmer-producers obtain from FCS banks and associations for non-farm business needs would be proportionate to their investment in their agricultural or aquatic activities.

For the purposes of proposed § 613.3000(d), agricultural assets include real estate, a home that is located on a farm or ranch, equipment, chattel, and livestock. The proposed regulation contemplates that the market value of agricultural assets would be determined at the time of loan

[3] The former Federal land banks were granted this authority by the Farm Credit Act of 1955, Pub. L. No. 347, section 304(a), 69 Stat. 655 (Aug. 11, 1955). The Farm Credit Act of 1956 granted this authority to the PCAs, Pub. L. No. 84–809, section 105(i), 70 Stat. 665 (July 26, 1956).

[4] S. Rep. No. 1201, 84th Cong., 1st. Sess., (July 28, 1955), p. 21; H. Rep. No. 863, 84th Cong., 1st. Sess., (June 20, 1955), p. 20.

application from the most credible source available to FCS institutions. Because real estate, equipment, and livestock make up the bulk of agricultural assets on most loan applications, appraisals and collateral valuations would be the logical sources to support the market value of the most material of these assets. Absent available appraisals and valuations completed for the FCS institution, other sources could serve as a basis for determining market value such as county tax assessment values or real estate multiple listings. It is not the FCA's intent to cause extra cost or regulatory burden on either the FCS institution or the borrower in order to establish the market value of agricultural assets for determining the level of financing available from the System. Rather, a reasonable but credible valuation performed by FCS institutions that can be supported and tested should suffice for determining compliance with this subpart.

Proposed § 613.3000(d)(2) would limit financing that farmer-investors could obtain from the FCS for all of their other credit needs, including housing and domestic needs, to the market value of their agricultural assets. Such borrowers are not engaged in agricultural production and own agricultural land as a passive investment. As the FCA interprets the Act through its legislative history, Congress did not intend that these farmer-investors have the same access to the FCS for non-agricultural credit needs as farmer-producers. Proposed § 613.3000(d)(2) precludes farmer-investors from obtaining FCS loans for their other credit needs in amounts that are disproportionate to their investment in agriculture. The proposed regulation imposes no restrictions on loans for agricultural or aquatic purposes that farmer-investors may obtain from System banks and associations, and therefore, farmer-investors would have increasing access to the FCS for their other credit needs as their investment in agriculture increases. Retired farmers, ranchers, and aquatic producers and harvesters whose land is cultivated by others would be considered farmer-producers, if they acquired their agricultural land originally for agricultural production purposes rather than as an investment.

Non-resident foreign nationals are accorded the same treatment under proposed § 613.3000(d) as farmer-investors. Although such borrowers are often active agricultural or aquatic producers, their legal status imposes restrictions on their activities within the United States. Prudence requires greater restrictions on these borrowers than on farmer-producers who are citizens or permanent residents of the United States.

Proposed § 613.3000(d)(3) would continue to authorize System banks and associations to finance the other credit needs of family farm corporations and other small and medium sized legal entities that are closely held by bona fide farmers, ranchers, and aquatic producers or harvesters. Although all agricultural corporations would now become eligible to borrow from Farm Credit banks and associations that operate under titles I and II of the Act, the FCA intends that most large agricultural borrowers could obtain System financing only for their agricultural or aquatic needs. Under proposed § 613.3000(d)(3), legal entities could obtain System loans for their other credit needs in an amount that does not exceed the market value of their agricultural assets only if: (1) The securities of the borrower are not traded on a public exchange; and (2) more than 50 percent of the assets of the borrowing legal entity are used in agricultural or aquatic production. The FCA believes that this approach would effectively preclude System banks and associations from financing the other credit needs of large agribusiness corporations and conglomerates.

The FCA requests comments on whether and how the final regulations ought to distinguish among types of eligible farmers with respect to financing other credit needs.

*B. Financing of Processing or Marketing Operations*

Sections 1.11(a) and 2.4(a) of the Act authorize FCBs, ACBs, and their affiliated associations to finance the processing or marketing operations of bona fide farmers, ranchers, and aquatic producers or harvesters. According to the Act, the processing or marketing operation must be ''directly related'' to the agricultural or aquatic activities of the borrower. The Act also requires the borrower's agricultural or aquatic activities to supply some portion of the throughput used in the processing or marketing operations. The Act limits processing or marketing loans to borrowers who supply less than 20 percent of the throughput to 15 percent of the total outstanding loans, during the preceding fiscal year, of: (1) The FCB or ACB; and (2) all associations that are affiliated with the same funding bank.

The existing regulation, § 613.3045, imposes certain restrictions on financing for processing or marketing operations that are not required by the Act or are no longer needed to ensure the safety and soundness of the FCS. For example, additional compliance thresholds presently exist for loans to borrowers who supply less than 50 percent of the throughput. A restriction that has been particularly problematic relates to processing or marketing operations that have different owners than the agricultural or aquatic operation providing the throughput. Section 613.3045(b)(2)(iii) currently requires that the entire ownership of the processing or marketing operation vest in eligible borrowers. Many System banks and associations responded to the Notice of Regulatory Burden by requesting relief from this 100-percent ownership requirement. According to System commenters, processing or marketing operations have become ineligible under the existing regulation solely because of a slight change in ownership. FCS institutions point out, for example, that a borrower who establishes an employee ownership program can no longer borrow from the System.

The FCA now proposes to revise and redesignate this regulation, so it more closely parallels the Act. The revised regulation, § 613.3010, will simply require that the processing or marketing operation: (1) Be directly related to the borrower's agricultural or aquatic activities; and (2) consistently process some throughput produced by the borrower.

In an effort to reduce regulatory burden on FCS banks and associations, the FCA proposes to repeal the additional requirements that existing § 613.3045(b)(2) imposes on borrowers who supply less than 50 percent of the throughput to a processing or marketing operation. The FCA believes that this regulatory requirement is no longer necessary to interpret the Act since a statutory portfolio limitation has replaced the statutory requirement that the borrower supply at least 20 percent of the throughput.[5] The FCA also proposes to repeal § 613.3045(e), which unnecessarily specifies paperwork requirements for FCS institutions.

The FCA's proposal would also relax the current requirement that bona fide farmers, ranchers, and aquatic producers or harvesters own 100 percent of an eligible processing or marketing operation. Proposed § 613.3010(a)(1) clarifies that an eligible borrower includes a legal entity in which a controlling interest is owned by individuals or other legal entities that qualify as bona fide farmers, ranchers, or aquatic producers or harvesters. The

[5] Pub. L. No. 101–624, section 1832, 104 Stat. 3359 (1990).

controlling interest requirement in proposed § 613.3010(a)(1) implements sections 1.11(a)(1) and 2.4(a)(1) of the Act, which require a processing or marketing operation to be directly related to the agricultural or aquatic operations of the borrower. The FCA seeks comments on whether the controlling interest requirement appropriately implements the intent of the Act and provides sufficient guidance to System lenders.

Proposed § 613.3010(b) implements the portfolio restrictions that sections 1.11(a)(2) and 2.4(a)(1) of the Act impose on loans to borrowers who contribute less than 20 percent of the throughput used by a processing or marketing operation. This provision would limit retail loans that System banks and associations make to borrowers who supply less than 20 percent of the throughput to 15 percent of outstanding loans at the end of the preceding fiscal year for: (1) The funding bank; and (2) all associations that are funded by the same FCB or ACB. Proposed § 613.3010(b) also retains the existing requirement in § 613.3045(d)(2) that each funding bank, in conjunction with its affiliated associations, ensures that processing or marketing loans to borrowers who supply less than 20 percent of the throughput are equitably allocated among the associations.

The FCA believes the proposed regulation would better enable System institutions to finance entities that contribute substantially to the agricultural economy and rural communities and that increase the income of America's farmers, ranchers, and aquatic producers or harvesters. This proposal would ultimately benefit both producers and consumers by providing competitive credit for this sector of the agricultural economy and fostering economic development in rural areas.

*C. Loans to Farm-Related Businesses*

Sections 1.9(2), 1.11(c)(1), and 2.4(a)(3) of the Act authorize FCBs, ACBs, and direct lender associations to finance ''persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs.'' Presently, § 613.3050(a) imposes an additional requirement that farm-related businesses furnish ''custom-type services'' that are directly related to on-farm operating needs of farmers and ranchers. The term ''custom-type services'' is defined by § 619.9120 as the ''performance of on-farm functions on a 'for-hire' basis which farmers and ranchers typically have done for themselves.'' Furthermore, to qualify under § 613.3050(b)(2) a farm-related business must sell only goods and inputs that ''are incident to the services provided.'' Examples of farm-related services authorized by this regulation include: (1) Spraying of crops; (2) harvesting; (3) hauling agricultural commodities to grain elevators, livestock markets, and other processing centers; (4) custom feed mixing operations; (5) veterinary services; and (6) drying farm commodities.

The FCA has received numerous comments from the FCS about the burdensome nature of §§ 613.3050 and 619.9120. Many System representatives have stated that the current regulatory requirements too narrowly restrict the types of agricultural service businesses that can qualify for FCS loans. Statistics about FCS loans to farm-related businesses suggest that this may be true. Farm-related business loans comprise less than 1 percent of all loans in the Farm Credit System, and many FCS banks and their affiliated associations have no farm-related business loans in their portfolios. These circumstances may indicate that current §§ 613.3050 and 619.9120 frustrate the ability of System banks and associations to fund statutorily eligible and creditworthy farm-related service businesses, and unnecessarily deny many farm-related businesses competitive credit options.

To address this issue, the FCA is proposing a new regulation, § 613.3020, which would replace §§ 613.3050(a), 613.3050(b), and 619.9120, with an eligibility standard for farm-related businesses that is more closely aligned with the plain language of the Act. Under proposed § 613.3020(a), an individual or legal entity who furnishes services to farmers and ranchers that are directly related to their agricultural operations would be eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act. Regulatory restrictions that are unnecessary to implement or interpret sections 1.9(2), 1.11(c)(1), and 2.4(a)(3) of the Act would be eliminated.

In 1979, the FCA acknowledged in the preamble to § 613.3050 that neither the literal language of the statute nor its legislative history compel an eligible farm-related business to actually perform services on the customer's property.[6] At that time, however, the FCA did not delete the ''on-farm'' requirement from the definition of ''custom-type'' services in § 619.9120. The FCA now proposes to delete the definition of custom-type services which should dispel confusion surrounding the ''on-farm'' requirement.

Furthermore, the Act does not specifically require eligible borrowers to furnish only ''custom-type'' services to farmers and ranchers. Although passages in the legislative history to the Farm Credit Act of 1971 contain examples of various custom services that farmers and ranchers may perform themselves, the FCA finds no evidence that sections 1.11(c)(1) or 2.4(a)(3) of the Act actually preclude the FCS from financing other types of services that are directly related to agricultural production. In fact, agricultural producers today rely on technologically advanced services that they cannot provide for themselves, such as computer mapping of soil and crop conditions, nutritional analysis for dairy production, and specialized animal husbandry records and services. These technologically advanced services enable farmers and ranchers to enhance their income by reducing costs, increasing productivity, and meeting the growing demand of consumers for improved food quality and specialty food products. The FCA believes the ability of the FCS to finance such service providers strengthens the agricultural economy of the United States.

A farm-related business is currently ineligible to borrow from a Farm Credit bank or association under § 613.3050(b)(2) unless substantially all of the goods sold are consumed in the services that the borrower provides to farmers and ranchers. As the FCA interprets sections 1.11(c)(1) and 2.4(a)(3) of the Act and their legislative history, a farm-related service business should not be automatically ineligible for FCS loans simply because it also sells some goods that are not incidental to its services. In the FCA's opinion, such a disqualification defeats the statutory purpose of providing credit to farm-related service businesses. For this reason, the FCA proposes to repeal current § 613.3050(b)(2).

The FCA proposes to rely on scope of financing provisions to ensure that FCS banks and associations finance only farm-related businesses that are eligible to borrow under sections 1.11(c)(1) and 2.4(a)(3) of the Act. Proposed § 613.3020(b) would require FCS banks and associations to determine the extent of financing for an eligible farm-related business by measuring the applicant's income on either a gross sales or a net sales basis. More specifically, proposed § 613.3020(b)(1) would authorize financing of all the business needs of an eligible farm-related business that derives more than 50 percent of its

[6] 44 FR 69631 (Dec. 4, 1979).

income, as determined on either a gross sales or net sales basis, from furnishing agricultural services to farmers and ranchers. A borrower who derives 50 percent or less of its income from furnishing agricultural services could obtain System financing under proposed § 613.3020(b)(2) only for the agricultural services portion of its business.

The FCA notes that this regulation would permit System banks and associations to measure each borrower's income consistently on either a gross sales or a net sales basis, as appropriate. System banks and associations should experience no difficulty in complying with § 613.3020(b) because gross and net sales information is normally provided in financial statements that a farm-related business submits to support its credit request.

The FCA believes that proposed § 613.3020 implements the requirements of the Act without imposing unnecessary regulatory burdens on the FCS or restricting its ability to offer competitive credit to farm-related businesses. The FCA believes that this proposal would provide System banks and associations and FCA examiners with clear and appropriate regulatory guidance, and it would protect the interests of System competitors by enforcing statutory restrictions.

The FCA proposes to delete § 613.3015, which directs a Farm Credit bank or association to determine the eligibility of an applicant who both conducts agricultural or aquatic operations and owns a farm-related business, using one or any combination of the criteria in the existing regulations. The existing regulation is not needed to interpret the Act nor to promote safety and soundness. Clearly, sections 1.11(a) and 2.4(a) of the Act and proposed § 613.3000 authorize FCS banks and associations to finance the ''other credit needs'' of bona fide farmers, ranchers, and aquatic producers and harvesters. For this reason, System banks and associations can finance farm-related businesses that are owned by eligible agricultural or aquatic producers under either proposed §§ 613.3000 or 613.3020. The FCA observes, however, that a System bank or association could not finance the ''other credit needs'' of an eligible farm-related business that is not owned by a bona fide farmer, rancher, or aquatic producer.

*D. Non-farm Rural Home Loans*

Sections 1.9(3), 1.11(b) and 2.4(b) of the Act authorize FCBs, ACBs, and their affiliated associations to finance single-family, moderately priced homes for residents of rural areas where the population does not exceed 2,500 inhabitants. Sections 1.11(b)(2) and 2.4(b)(2) generally restrict non-farm rural home loans to 15 percent of the total outstanding loans of each FCB, ACB, or association.

An existing regulation, § 613.3040, implements this statutory authority. The FCA now proposes to redesignate this regulation as § 613.3030 and revise it to provide greater flexibility to finance non-farm rural homes to the extent allowed by the Act. This proposal differs from the existing rural housing regulation in three ways. First, it clarifies that rural housing loans do not encompass loans to farmers and ranchers for their housing needs, because such loans are properly classified as agricultural loans. Second, the regulation revises and simplifies the criteria for determining whether a home is moderately priced and located in a rural area, as the law requires. Finally, the proposal eliminates regulatory restrictions that are not needed for safety and soundness. The FCA also addresses specific issues about non-farm rural home loans that commenters raised during the Regulatory Burden comment period and in other forums.

1. Definition of Rural Homeowner

The FCA's proposal would clearly differentiate the authority of System banks and associations to finance homes for agricultural and aquatic producers from all other rural residents. Proposed § 613.3030(a)(1) would define an eligible rural homeowner as a person who is not a bona fide farmer, rancher, or aquatic producer or harvester within the meaning of proposed § 613.3000(a)(2). The definition of ''rural home'' in proposed § 613.3030 would no longer incorporate current § 613.3040(e)(1), which requires either that the: (1) Property lack the capacity to produce agricultural products on a sustainable basis; or (2) borrower does not use the property for agricultural purposes. These provisions were the regulatory mechanism for ensuring that housing loans to farmers were considered agricultural loans rather than rural home loans. The proposed regulations addresses this issue by excluding farmers from the definition of rural homeowner. The FCA also proposes to repeal existing § 613.3040(e)(2), which applies the price, locality, and portfolio restrictions in sections 1.11(b) and 2.4 (b)(1), (b)(2), and (b)(3) of the Act to home loans that System banks and associations make to certain farmers, ranchers, and aquatic producers and harvesters.

The FCA believes that this new approach will clarify the authority of System lenders to finance homes for both agricultural and aquatic producers and other rural residents and eliminate any confusion about the scope of home lending authority. Under the FCA's proposal, Farm Credit banks and associations would finance homes for both full-time and part-time farmers, ranchers, and aquatic producers under proposed § 613.3000(d), while proposed § 613.3030 would apply to home loans that System lenders make to all other rural residents.

Because the Act affords certain benefits and applies certain restrictions to agricultural loans and rural housing loans, it has been important to classify home loans to farmers correctly. For example, the homes of agricultural or aquatic producers are not required to be moderately priced or located in communities where the population does not exceed 2,500 inhabitants. In fact, neither the Act nor FCA regulations require agricultural producers to live on the land that they farm or ranch. As the FCA interprets the Act, home loans to farmers are not subject to the portfolio limitations applicable to rural housing loans.

The FCA notes that statutory borrower rights generally apply to all loans to farmers, ranchers, and aquatic producers, including loans for the purchase of a residence.[7] Borrower rights do not, however, apply to rural home loans.

All bona fide agricultural and aquatic producers are required by section 4.3A(c)(1)(D)(i) of the Act to own voting stock in the FCS bank or association that extends credit to them, including home loans. In contrast, non-farm rural residents hold non-voting participation certificates in FCS banks and associations.

2. Definition of Rural Home

Proposed § 613.3030(a)(2) defines a ''rural home'' as a single-family moderately priced dwelling located in a rural area that will serve as the occupant's principal residence. Sections 1.11(b)(2) and 2.4(b)(1) of the Act explicitly limit the non-farm rural home financing authority of FCS banks and associations to single-family moderately priced houses. The proposed regulation deletes the requirement in existing

[7] In some instances, the protections of another Federal law will supplant the borrower rights provisions of the Act. For loans covered by the Federal Truth in Lending Act (TILA), 15 U.S.C. 1601, *et seq.*, FCS lenders must provide the disclosures required by the TILA in lieu of the effective interest rate disclosures that are otherwise applicable to loans pursuant to subpart K of part 614. The TILA applies to all loans for which the principal purpose is residential housing, regardless of whether the loan is classified as an agricultural or rural housing loan under FCA regulations.

regulations that System banks and associations finance only owner-occupied homes, because this limitation does not appear in the Act. The proposal retains, however, a requirement that the home be used as a primary residence. This requirement would implement the Act's stated intent that the System provide financing for housing for rural residents. The FCA is concerned that an infrequently occupied vacation home would not be compatible with Congressional intent. This change will enable the System to finance moderately priced rural homes that shall be used as the principal residence of either the borrower or another rural resident. Thus, a borrower who intends to occupy the home in the future, perhaps as a retirement residence, would be eligible for financing so long as the house was leased to a tenant, in the interim, as the tenant's principal residence.

The FCA proposes to remove the passage in § 613.3040(a)(2) that describes rural homes as ''conventional housing, modular housing, or mobile homes which are related to a specific site.'' The FCA believes that any type of dwelling that is moderately priced and located in a rural area may be financed, so the passage is not necessary to implement the Act. Section 613.3030(b) retains a provision that allows a borrower to obtain financing from the System on only one home at any one time. This limitation, which derives from the Act's legislative history, prevents the System from financing rural housing developers.

The existing regulation, § 613.3040(c), allows FCS banks and associations to make loans to non-farm rural residents solely for the purpose of buying, building, remodeling, improving, repairing a rural home, and refinancing existing indebtedness thereon. System representatives have frequently petitioned the FCA to remove this restriction so that they can offer equity lines-of-credit loans to rural homeowners.

The FCA observes that although home equity loans were not generally available loan products when the rural home financing authority was granted to the FCS in 1971, neither the Act nor FCA regulations preclude revolving lines of credit secured by home equity. During the intervening years, however, the residential mortgage markets have developed so that home equity lines of credit are now standard loan products that mortgage lenders routinely offer to their clientele. Home equity loans would enable the rural home lending authority of the FCS to reflect current market practices and would allow rural homeowners who borrow from the FCS to have more flexibility in financing and utilizing the equity in their homes.

The FCA believes line-of-credit loans are compatible with sections 1.11(b) and 2.4(b) of the Act and the current regulation, which authorize System institutions to finance the housing needs of non-farm rural residents. Furthermore, home equity loans would enable FCS banks and associations to fulfill their mission of providing for an adequate and flexible flow of credit for housing in rural areas. Homeowners in rural communities often lack affordable credit options that are widely available in metropolitan areas.

The FCA also observes that home equity loans are compatible with the existing authority of production credit associations (PCAs) and agricultural credit associations (ACAs) under section 2.4(b) of the Act to take either a first or second lien on a rural home. Under existing FCA regulations, FCBs, ACBs, Federal land credit associations (FLCAs), and ACAs can, for certain purposes, make a line-of-credit loan that is secured by a first lien on an unencumbered rural home that is occupied by the borrower. Furthermore, an FCS long-term mortgage lender that already holds the first lien on the property could take a second lien to secure the home equity line-of-credit loan.

For these reasons, proposed § 613.3030(b) would enable FCS banks and associations to offer home equity loans to non-farm rural residents in addition to the types of loans that are already authorized by existing § 613.3040(c). The FCA also proposes conforming revisions to § 614.4222. The FCA emphasizes that FCS lenders could only make home equity line-of-credit financing on rural homes that comply with the requirements of proposed § 613.3030. The FCA fully expects home equity loans to be prudently underwritten. The FCA notes that this proposal would grant FCS institutions reasonable flexibility to make rural home loans within the 15-percent portfolio limit that is imposed by statute.

3. Definition of Rural Area

The FCA proposes to revise the regulatory definition of ''rural area'' to provide a standard that is clear, consistent, and easy to apply. The proposed definition will also eliminate the need for System institutions to seek FCA guidance about whether a particular locality is a ''rural area'' within the meaning of these regulations. Proposed § 613.3030(a)(3) defines a ''rural area'' as a designated territory within a State or the Commonwealth of Puerto Rico, including communities that have a population of not more than 2,500 inhabitants based on the latest decennial census of the United States.

The United States Bureau of Census is an expert, official, and neutral source for accurate and accessible information about the demographics of rural areas. The United States census examines the population density in each State and then classifies the territories with 2,500 or fewer inhabitants as ''rural areas.'' The United States Bureau of the Census does not utilize political boundaries to determine whether an area is rural. The United States census often identifies rural pockets (with 2,500 inhabitants or fewer) that are located inside standard metropolitan statistical areas. The proposed regulation would enable FCS banks and associations to finance non-farm housing in such designated rural areas.

Proposed § 613.3030(a)(3) would replace the definition of ''rural area'' in current § 613.3040(a)(3). Census data satisfies all of the criteria for ''rural areas'' that are specified by existing § 613.3040(a)(3). This proposal would also delete the current regulatory requirement that the FCA approve rural areas that include ''towns'' where the population exceeds 2,500 people. Since 1971, the FCA has acted on only a few requests to approve rural areas including such towns. Moreover, the FCA believes that the Bureau of the Census designation of a ''rural area'' may provide significantly more reliable and flexible data for System institutions because it disregards political boundaries and is updated to reflect changing conditions.

4. Definition of Moderately Priced

The FCA also proposes to replace the definition of ''moderately priced'' housing in existing § 613.3040(c)(2) with new § 613.3030(a)(4). The revised definition would provide System banks and associations with a clear standard for determining whether a rural home is ''moderately priced.'' The FCA proposes a two-part definition for ''moderately priced'' rural homes. The first part is a safe-harbor provision for rural home loans that qualify under section 8.0(1)(B) of the Act for programs of the Federal Agricultural Mortgage Corporation (Farmer Mac). Loans qualify as collateral for Farmer Mac securities if they are secured by rural homes that are located in communities of fewer than 2,500 inhabitants and have a purchase price of not more than $100,000, as adjusted for inflation. Thus, a rural home would be considered ''moderately priced'' for the purposes of

proposed § 613.3030(a)(4)(i) if the loan complies with Farmer Mac's underwriting standards.

The second alternative, proposed § 613.3030(a)(4)(ii), allows Farm Credit banks and associations to finance rural homes that are below the 75th percentile of housing values, ranked from the lowest value to the highest value in the rural area where it is located, as published by the United States Bureau of the Census in the most recent edition of the Census of Housing, General Housing Characteristics. This provision will enable the FCS to finance homes valued in excess of $100,000 in areas in which such homes are still properly considered as moderately priced.

The FCS relied on a similar model until the early 1980's. At the time, the FCA provided administrative guidance to the System by annually publishing an upper limit for moderately priced housing. The upper value of moderately priced housing was derived from housing prices throughout the United States, stratified from the lowest to the highest sales figures. The FCA's proposal provides a more appropriate and accurate measure of ''moderately priced'' housing, because it examines housing prices in the designated rural areas where the property is located, rather than the entire United States.

In most designated rural areas with a population between 1,000 and 2,499 persons, the 75th percentile for housing prices does not exceed the Farmer Mac threshold of $100,000, as adjusted for inflation. As a result, most of the rural housing in the United States would satisfy either provision of proposed § 613.3030(a)(4). However, when the 75th percentile for home prices in designated rural areas exceeds $100,000, as adjusted for inflation, System institutions could finance homes that satisfy the criteria of proposed § 613.3020(a)(4)(ii) and still comply with Congressional intent that the System finance only moderately priced homes.

The FCA proposes to delete § 613.3040(c), and instead rely on § 614.4210(b), which authorizes System mortgage lenders to lend up to 97 percent of the appraised value of the security property if the loan is guaranteed by a Federal, State, or other government agency. This would permit FCS mortgage lenders to finance low-equity rural home borrowers when the loan is guaranteed by a Federal, State or other government agency.

5. Portfolio Limitations

Both new § 613.3030(c) and existing § 613.3040(d)(2) implement sections 1.11(b)(2) and 2.4(b)(2) of the Act, which limit non-farm rural home loans to 15 percent of the total outstanding loans of each FCS bank or association. Although the FCA has rewritten these provisions to enhance their clarity, the substantive requirements of existing § 613.3040(d)(2) remain the same. Proposed § 613.3030(c)(1) continues to restrict the rural home portfolio of each FCB or ACB to 15 percent of its total outstanding loans at any one time. Under proposed § 613.3020(c)(2), rural home loans by each direct lender association could not exceed 15 percent of its total outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank. Proposed § 613.3030(c)(3) restricts the aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank to 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

6. Other Deletions

The FCA proposes to delete the existing program limitations in § 613.3040(d)(1) and (d)(3). Existing § 613.3040(d)(1) is obsolete because it prohibits rural home lending in each Farm Credit district without the approval of the now-defunct district boards.[8] Moreover, no provision of the Act requires associations to obtain approval from their funding bank or the FCA before they can exercise their statutory authority to make rural home loans.

Finally, the FCA proposes to delete § 613.3040(d)(3), which states that ''agricultural loans shall receive priority to the exclusion of rural home loans'' if loan funds for the System are curtailed. This provision derives from a commitment that the FCA gave to Congress in 1971, when System banks and associations were first granted authority to finance non-farm rural homes.[9] The FCA continues to adhere to this commitment. However, existing § 613.3040(d)(3) is a policy statement, rather than an enforceable regulatory provision. If a crisis curtails the ability of the FCS to meet the credit demands of agricultural and aquatic producers, the FCA Board would use its statutory authorities to ensure that the credit needs of agricultural and aquatic producers are given priority.

[8] The district boards were abolished by Pub. L. No. 100–399, section 409(d), 102 Stat. 989, 1003, (August 17, 1988).

[9] S.R. 92–307, 92nd Cong., 1st. Sess., (July 27, 1971), p. 6.

## III. Eligibility and Scope of Financing Under Title III of the Act

The FCA proposes to revise and clarify regulations that govern eligibility and scope of financing for BCs and ACBs. The proposed regulations will implement provisions of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 [10] (1992 Act) and the Farm Credit System Agricultural Export and Risk Management Act [11] (1994 Act) that expand the ability of BCs and ACBs to finance: (1) Cooperatives; (2) their parents, subsidiaries, and other entities in which eligible cooperatives hold an ownership interest; and (3) water and waste disposal facilities. The FCA also proposes to amend these regulations so that BC and ACB loans to rural electric and telecommunication utilities are compatible with recent revisions to the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq.

This proposal retains the format in which the domestic lending authorities and international lending authorities of these banks are addressed in two separate regulations. The FCA proposes to redesignate current § 613.3110, however, as new § 613.3100, and to rearrange this regulation so it addresses eligibility, and when appropriate, purposes for financing for each of the following classes of domestic borrowers: (1) Cooperatives, their parents, subsidiaries, and other related entities that serve farmers, ranchers, and aquatic producers and harvesters; (2) electric and telecommunications utilities; (3) water and waste disposal facilities; and (4) domestic lessors. Similarly, the FCA proposes to redesignate § 613.3120 as new § 613.3200, which will clearly delineate eligibility and purposes for financing for the following categories of international loan transactions: (1) Imports; (2) exports; and (3) international business transactions.

Current § 613.3005(b) will be deleted by this proposal because it prescribes business objectives and management practices. From the FCA's perspective, § 613.3005(b) is not necessary to implement or interpret the Act or to promote safety and soundness.

*A. Eligibility and Scope of Financing for Domestic Loans*

1. Cooperatives and Related Entities That Serve Agricultural and Aquatic Producers

Proposed § 613.3100 streamlines the provisions in current § 613.3110 which

[10] Pub. L. No. 102–552, 106 Stat. 4102, (Oct. 28, 1992).

[11] Pub. L. No. 100–376, 108 Stat. 3497, (Oct. 19, 1994).

authorize BCs and ACBs to lend to cooperatives and related entities that serve farmers, ranchers, and aquatic producers and harvesters. The eligibility provisions for this class of borrowers are scattered throughout paragraphs (a), (b), (c) and (d) of the current regulation. The FCA proposes to consolidate these requirements for agricultural and aquatic cooperatives, their parents, subsidiaries, and other related entities into § 613.3100(b). Except to the extent that proposed § 613.3100(b) incorporates recent statutory amendments that expand the authority of BCs and ACBs to lend to cooperatives and their affiliates, this reorganization is not intended to alter the substance of the current regulation.

Proposed § 613.3100(a)(1) defines a cooperative as any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, which conducts business for the mutual benefit of its members and has the power to: (1) Process, prepare for market, handle, or market farm or aquatic products; (2) purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or (3) furnish business or financially related services to their members.

The FCA proposes to revise the definition of service cooperative in current § 613.3110(a)(4) so that it more closely reflects the language of the Act. Under the current regulation, an eligible service cooperative is ''predominately involved in providing specialized business services related to the agricultural or aquatic business operation of farmers, ranchers, or producers and harvesters of aquatic products, or cooperatives.'' This regulatory definition is more restrictive than section 3.8(a) of the Act, which only requires such cooperatives to furnish ''farm or aquatic business services or services'' to their members. Because the Act does not require eligible service cooperatives to serve only the agricultural or aquatic business operations of their members, proposed (and redesignated) § 613.3100(a)(5) would enable BCs and ACBs to finance service cooperatives that are predominately involved in providing both business services and financially related services to farmers, ranchers, aquatic producers and harvesters, or cooperatives. Cooperatives that satisfy the criteria in proposed § 613.3100(b)(1) are eligible to borrow from a BC or ACB.

Proposed § 613.3100(b)(1)(i) implements section 3.8(a)(4) of the Act, which requires agricultural and aquatic producers to hold a specified percentage of the voting control of an eligible cooperative. Generally, both the Act and the regulation require agricultural and aquatic producers to hold at least 80 percent of the voting control of cooperatives that are eligible to borrow under title III of the Act. However, section 3.8(a)(4) of the Act and § 613.3100(b)(1)(i) reduce the minimum voting control threshold of agricultural and aquatic producers in service cooperatives and certain farm supply cooperatives to 60 percent. Both the current and proposed versions of this regulation allow the board of directors of a BC or ACB to adopt resolutions that impose a higher voting control threshold on any type of cooperative. The FCA proposes to delete the remainder of current § 613.3110(b)(2), which prescribes detailed procedures about how BCs and ACBs should: (1) Treat all eligible cooperatives equitably; (2) compel borrowers to make good faith representations about voting control by agricultural and aquatic producers; and (3) document voting control of eligible cooperatives in certain circumstances. Such regulatory prescriptions are deemed unnecessary for the enforcement of eligibility limitations.

Proposed § 613.3100(b)(1)(ii) retains, with minor stylistic revisions, the current statutory requirement that each cooperative deal in farm or aquatic products or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business that it transacts with or for nonmembers. Transactions with the United States, its agencies and instrumentalities, and public utilities are excluded from the amount of business that a cooperative conducts with either members or nonmembers. Redesignated § 613.3100(b)(1)(iii) retains, without substantive amendment, the requirements in section 3.8(a) of the Act and current § 613.3110(b)(4) that: (1) No member of an eligible cooperative has more than one vote because of the amount of stock or membership capital owned therein; or (2) an eligible cooperative restricts dividends on stock or membership capital to 10 percent per year, or the maximum percentage per year permitted by applicable State law, whichever is less.

Proposed § 613.3100(b)(2) enables legal entities that are affiliated with eligible cooperatives to borrow from BCs and ACBs. Under proposed § 613.3100(b)(2)(i), any legal entity that holds more than 50 percent of the voting control of any eligible cooperative may borrow from a BC or ACB as long as it uses the loan proceeds to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank. Any legal entity in which an eligible cooperative has an ownership interest would be eligible to borrow from a BC or ACB under proposed § 613.3100(b)(2)(ii). This provision of the regulation reflects section 3(B) of the 1994 Act, which authorizes BCs and ACBs to finance, for the first time, legal entities in which the ownership interest of eligible cooperatives is less than 50 percent. However, the amount of financing that a BC or ACB can provide to entities in which eligible cooperatives hold less than a 50-percent ownership interest under section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(b)(2)(ii) cannot exceed the percentage that eligible cooperatives own in the entity multiplied by the value of the entity's total assets. For example, an entity with $100 million in total assets that is 45-percent owned by eligible cooperatives could receive financing from a BC or ACB that does not exceed $45 million.

Proposed § 613.3100(b)(2)(iii) derives from section 506 of the 1992 Act, which authorizes BCs and ACBs to finance creditworthy, non-profit service cooperatives and their subsidiaries, if they benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers and harvesters who are its members. Many of the cooperative eligibility criteria in § 613.3100(b)(1) apply to this new class of borrowers. First, only eligible service cooperatives and their subsidiaries qualify for loans under proposed § 613.3100(b)(2)(iii). The regulation requires farmers, ranchers, and aquatic producers and harvesters to hold at least 60 percent of the voting control in a service cooperative which is either the borrower, or the borrower's parent. Second, eligibility under proposed § 613.3100(b)(2)(iii) is predicated upon compliance with proposed § 613.3100(b)(1)(iii), which requires cooperatives to either: (1) Operate on the principle of one person, one vote; or (2) restrict dividends on stock or membership capital to 10 percent per year, or the maximum percentage per year permitted by applicable State law, whichever is less. Neither section 3.8(b)(1)(D) of the amended Act, nor § 613.3100(b)(2)(iii) of the proposed regulations require this category of borrowers to transact more business with members than non-members.

2. Electric, Telecommunications, and Cable Television Utilities

The FCA proposes to update and consolidate the regulations that authorize BCs and ACBs to finance

public utilities that provide electric, telecommunication, and cable television services in rural areas. Section 1322 of the Food Security Act of 1985 [12] significantly expanded the authorities of the BCs (and subsequently the ACBs) to finance rural utilities. Prior to 1985, only electric and telephone cooperatives in which agricultural or aquatic producers held 60 percent of the voting control were eligible for loans under title III of the Act. After 1985, any rural electric or telephone utility that qualifies for financing from either the former Rural Electrification Administration (now the Rural Utilities Services (RUS)), or the Rural Telephone Bank (RTB) of the United States Department of Agriculture is eligible to borrow under section 3.8(b)(1)(A) of the Act. Section 3.8(b) of the Act allows the corporate parents, subsidiaries, and other related entities of such rural utilities to borrow from BCs and ACBs, as well.

The statutory eligibility standards for rural electric and telecommunication utilities are incorporated into § 613.3100(c)(1) of the proposed regulation, which consolidates all of the rural utilities eligibility and scope of financing provisions that are now scattered throughout paragraphs (c)(1), (c)(2), and (c)(3) of existing § 613.3110.

Utilities cooperatives in which at least 60 percent of the voting control vests with agricultural or aquatic producers continue to separately qualify for BC and ACB loans under section 3.8(a)(4)(A) of the Act. State laws usually require utilities to provide electric or telephone service to all inhabitants of a specific geographic territory. As a result of the growth of the non-farm population in rural areas, virtually no utility cooperative still satisfies the statutory requirement that farmers, ranchers, and aquatic producers comprise at least 60 percent of its membership. The FCA understands that BCs and ACBs no longer receive loan applications from borrowers who meet the criteria of section 3.8(a)(4)(A) of the Act. Therefore, the FCA proposes to delete specific references in the regulations to this class of borrowers. However, the FCA notes that utility cooperatives in rural areas almost always satisfy the less stringent eligibility criteria of the RUS or the RTB. As a result, BCs and ACBs now lend exclusively to borrowers who are eligible for RUS or RTB loans.

Redesignated § 613.3100(c)(1)(ii) makes minor stylistic edits to existing § 613.3110(c)(3), which authorizes BCs and ACBs to finance any legal entity that holds more than 50 percent of the voting control of any eligible electric or telecommunication utility if the borrower uses the proceeds of the loan to fund the activities of its subsidiary on the terms and conditions specified by the bank. The subsidiaries and other entities in which eligible utility borrowers hold an ownership interest also qualify for BC and ACB loans under amended section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(c)(1). However, when eligible rural electric and telecommunication utilities own less than 50 percent of another entity, section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(c)(3) limit bank financing to an amount that does not exceed the ownership percentage multiplied by the total assets of such entity.

The FCA proposes that § 613.3100(a)(3) and (c) refer to ''telecommunication,'' rather than ''telephone'' services. This proposed revision reflects the fact that Congress recently amended the definition of ''telephone service'' in section 203(a) of the Rural Electrification Act of 1936, 7 U.S.C. 924(a), to encompass new telecommunication technologies.[13] Whereas 7 U.S.C. 924(a) previously defined ''telephone services'' as communications ''through the use of electricity between the transmitting and receiving apparatus,'' the statute now refers to communications ''by wire, fiber, radio, light, or other visual or electromagnetic means.'' As a result, cellular, facsimile, cable television, speed data services and other technologically advanced communication services are increasingly available in rural areas. Accordingly, proposed § 613.3100(c)(2) authorizes BCs and ACBs to finance these new telecommunication technologies and services.

Proposed § 613.3100(c)(2) would authorize BCs and ACBs to extend credit to eligible borrowers so they can provide electric or telecommunication services in rural areas. Although the eligibility of rural utilities to borrow from a BC or ACB is now based primarily upon their eligibility for RUS or RTB loans, the purposes for financing for utilities is not directly governed by the Rural Electrification Act of 1936 as amended. Section 203(a) of the Rural Electrification Act of 1936, as amended, 7 U.S.C. 924(a) expressly prohibits cable television carriers from obtaining loans from the RUS or RTB. However, section 3.7(b)(2)(A)(ii) of the Act permits BCs and ACBs to finance affiliated entities that facilitate the business operations of eligible rural electric or telephone utilities. For this reason, proposed § 613.3100(c)(2) would authorize BCs and ACBs to finance an eligible subsidiary of an electric or telecommunication utility that is licensed to provide cable television services in a designated rural community.

3. Water and Waste Disposal Facilities

In 1990, Congress added section 3.7(f) to the Act,[14] granting BCs and ACBs new authorities to finance water and waste disposal facilities in rural areas where the population does not exceed 20,000 inhabitants. The 1992 Act expanded the scope of financing so that BCs and ACBs could also finance the maintenance and operations of such water and waste disposal facilities.[15] The FCA proposes to add a provision to the regulation that will reflect this new statutory authority.

Under proposed § 613.3100(d)(1), a cooperative, or a public, quasi-public agency, body, or other public or private entity that under the authority of State or local law establishes and operates water and waste disposal facilities in a rural area would be eligible to borrow from a BC or ACB. For the purposes of proposed § 613.3100(d), a rural area is defined by statute as all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States. Proposed § 613.3100(d)(2) would authorize BCs and ACBs to extend credit to these borrowers for the installation, maintenance, expansion, improvement, or operation of rural water and waste disposal facilities.

4. Loans to Domestic Lessors

The FCA proposes to redesignate existing § 613.3110(c)(4) as new § 613.3100(e). Under this provision, a BC or ACB may extend credit to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the bank for use in their operations within the United States. The lease customers of eligible borrowers include any cooperative, rural electric or telecommunication utility, or water or waste disposal facility that is a shareholder of the BC or ACB. The corporate parents and subsidiaries of

[12] Pub. L. No. 99–198, section 1322, 99 Stat. 1534 (Dec. 23, 1985).

[13] Pub. L. No. 101–624, section 2354, 104 Stat. 4039, (Nov. 28, 1990).

[14] Pub. L. No. 101–624, section 2323(a), 104 Stat. 4013, (Nov. 28, 1990).

[15] Pub. L. 102–552, section 505, 106 Stat. 4131, (Oct. 28, 1992).

cooperatives and rural electric and telecommunication utilities may also lease from the borrower. The FCA observes that the authority of BCs and ACBs to make loans to domestic lessors is separate and distinct from the banks' authority to lease equipment to their shareholders under section 3.7(a) of the Act.

5. Status of Certain Borrowers

Section 3.8(b)(4) of the Act preserves the eligibility of existing BC or ACB borrowers despite adverse changes in the law. Existing § 613.3110(b)(5) ''grandfathers'' parties who were actual BC borrowers on May 17, 1972. The FCA believes that it is no longer necessary for this regulation to contain a ''grandfather'' clause because the statute adequately protects such borrowers. The eligibility of current BC and ACB borrowers will not be adversely affected by the removal of this regulatory provision.

*B. Eligibility and Scope of Financing for International Loan Transactions*

The FCA proposes new § 613.3200, which implements the expanded statutory authority of BCs and ACBs to finance the import, export, and international business transactions of cooperatives and other eligible borrowers. The FCA proposes substantial revisions to the existing regulation in order to reflect the provisions in the 1994 Act and enhance the regulation's clarity. The FCA also proposes several conforming and technical amendments to §§ 614.4010(d), 614.4020(a), 614.4233, and subpart Q of part 614 to reflect the expanded international lending authorities of BCs and ACBs.

Proposed § 613.3200(a) would define ''farm supplies'' only for import and export loan transactions. Under this proposal, ''farm supplies'' refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing, or other capital goods which are not used in a farming or ranching operation. This definition of ''farm supplies'' is consistent with the legislative history of the 1994 Act which indicates that Congress did not intend the BCs and ACBs to use their international lending authorities to finance the import or export of capital equipment and machinery.[16]

[16] 140 Cong. Rec. S14236 (daily ed. Oct. 5, 1994) (Colloquy between Senators Leahy and Lugar).

1. Import Transactions

The 1994 Act did not alter the eligibility and scope of financing requirements for agricultural, aquatic, and farm supply imports that are financed by a BC or ACB. Although the FCA's proposal restructures the existing regulation by consolidating all of the eligibility and scope of financing requirements for import transactions into § 613.3200(b), the FCA has not changed the substance of current § 613.3120. The proposed regulation continues to authorize BCs and ACBs to finance the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States for: (1) An eligible cooperative; (2) a counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and (3) any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

2. Export Transactions

Section 3 of the 1994 Act expanded the authority of the BCs and ACBs to finance parties who facilitate the export of agricultural and aquatic products and farm supplies from the United States to foreign countries. As amended, section 3.7(b)(2)(A) of the Act extends eligibility for such export loans beyond eligible cooperatives, their related entities and counterparties, to any domestic or foreign party, provided that the BC or ACB gives priority, to the extent feasible, to cooperatively sourced products, commodities, and supplies. The statute imposes limits on BC and ACB financing of exports that are not both: (1) Originally sourced from cooperatives; and (2) guaranteed or insured in an amount that equals or exceeds 95 percent of the loan amount by an entity of the United States Government.

These new statutory requirements are incorporated into proposed § 613.3200(c), which provides that the total amount of balances outstanding on loans that are not originally sourced from cooperatives and at least 95-percent guaranteed by the Federal government shall not, at any time, exceed 50 percent of the bank's capital. Furthermore, both the Act and the regulation require the board of directors of each BC and ACB to adopt policies and procedures that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis.

3. International Business Transactions

Prior to 1994, section 3.7(b) of the Act authorized BCs and ACBs to finance only the domestic and foreign legal entities that facilitated the import and export transactions of their cooperative owners. As amended by section 3 of the 1994 Act, this statutory provision now authorizes BCs and ACBs to extend credit to any domestic or foreign legal entity that facilitates the foreign business operations of an eligible cooperative that holds an ownership interest in it. This new statutory authority is incorporated into proposed § 613.3200(d). The FCA observes that this new authority will enable BCs and ACBs to assist their cooperative customers in developing overseas markets for American agricultural and aquatic exports, which in turn, will ultimately increase the income of America's farmers, ranchers, and aquatic producers.

4. Restrictions

Proposed § 613.3200(e) contains restrictions that the Act imposes on the international lending authorities of BCs and ACBs. When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3200(e)(1) limit the amount of financing that a BC or ACB may provide to the affiliated entity for any import, export, or international business transaction, to the percentage of ownership that such cooperatives hold in such entity multiplied by the value of the entity's total assets. Furthermore, section 3.7(b)(2)(B) and proposed § 613.3200(e)(2) prohibit BCs and ACBs from financing the relocation of any plant or facility from the United States to a foreign country.

## IV. Similar Entities

In 1992, Congress granted FCS banks operating under title III of the Act new authority to participate in loans made by non-System lenders to ''similar entities.'' [17] Section 2 of the 1994 Act clarified this new authority,[18] while section 5 of the 1994 Act granted similar loan participation powers to Farm Credit banks operating under title I of the Act and direct lender associations.[19] As amended, sections 3.1(11)(B) and 4.18A of the Act grant System banks and associations broader authorities pertaining to eligibility and loan

[17] Pub. L. No 102–552, section 502, 106 Stat. 4130 (Oct. 28, 1992).

[18] Pub. L. No. 103–376, section 2, 108 Stat 3497, (Oct. 19, 1994).

[19] Pub. L. No. 103–376, section 5, 108 Stat 3497, (Oct. 19, 1994).

participations. The FCA proposes § 613.3300 to provide FCS banks and direct lender associations with guidance about the scope of their new authorities.

Both sections 3.1(11)(B)(iv) and 4.18A(a)(1) of the Act define ''participate'' and ''participation'' to mean ''multilender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance.'' The FCA proposes to incorporate this statutory definition into § 613.3300(a)(1). The FCA emphasizes that this definition would apply only to loan participations between FCS and non-System lenders under sections 3.1(11)(B) and 4.18A of the Act and proposed § 613.3300. For all transactions under sections 1.5(12), 2.2(13), and 3.1(11)(A) of the Act and subpart H of part 614, ''loan participation'' is defined by § 614.4325(a)(4) as a ''fractional undivided interest in the principal amount of the loan.''

The proposed regulation would authorize FCS banks and associations to provide related services to similar entities. The FCA observes that the plain language of sections 3.1(11)(B)(iv) and 4.18A(a)(1) of the Act permits FCS banks and associations to provide ''technical and financial assistance'' to similar entities. Accordingly, the FCA proposes a conforming amendment to § 618.8005 to reflect this new statutory authority. The FCA invites comments about whether the final regulation ought to provide further guidance about this financially related service authority.

Sections 3.1(11)(B)(ii) and 4.18A(a)(2) identify a ''similar entity'' as a party that is ineligible for a loan from an FCS bank or association, but has operations that are ''functionally similar'' to the activities of eligible borrowers. An entity is functionally similar to an eligible borrower if it derives a majority of its income from, or a majority of its assets are invested in, the conduct of the activities that are functionally similar to the activities that are conducted by eligible parties. The FCA proposes in § 613.3300(a)(2) a definition of similar entity that is closely aligned with the statutory definition.

Proposed § 613.3300(b) reflects sections 3.1(11)(B)(ii) and 4.18A(a)(2) of the Act, which the FCA interprets to mean that the borrower is ineligible under sections 1.9, 1.11, 2.4, 3.7 and 3.8 of the Act to borrow directly from a System bank or association, but has a credit need that an FCS lender could finance for an eligible borrower. Section 4.18A(b)(4) of the Act expressly precludes Farm Credit banks operating under title I of the Act and direct lender associations from participating in rural home loans under this similar entity authority.

For illustration purposes, the parties who qualify as similar entities under sections 3.1(11)(B) and 4.18A of the Act and the proposed regulations are presented below. The FCA solicits comments about whether the final regulation should provide a specific listing of the parties who qualify as similar entities. Farm Credit banks and direct lender associations that operate under titles I or II of the Act would be authorized to participate with non-System lenders in loans to: (1) Parties who are ineligible to borrow under § 613.3000 but require financing for any agricultural or aquatic purpose; (2) any individual, cooperative, and other legal entity that processes or markets agricultural or aquatic products, but supplies no throughput from an agricultural or aquatic operation; (3) a processing or marketing operation in which farmers, ranchers or aquatic producers do not hold a controlling interest; and (4) parties who are ineligible to borrow under proposed § 613.3020, but operate farm or aquatic supply businesses that furnish services, farm or aquatic equipment, and other goods that are directly related to the agricultural or aquatic operations of farmers, ranchers, and aquatic producers or harvesters.

The FCA believes that title III lenders could participate in loans made by non-System lenders to four types of ''similar entities.'' First, BCs and ACBs could participate in loans to any legal entity that is not part of a cooperative enterprise, but: (1) Processes, prepares for market, handles, or markets farm or aquatic products; (2) purchases, tests, grades, processes, distributes, or furnishes farm or aquatic supplies; or (3) furnishes business and financially related services primarily to farmers, ranchers, and aquatic producers or harvesters. Second, BCs and ACBs could participate in loans to electric utilities that provide some service in rural communities, but for some reason are ineligible to participate in RUS programs. Third, BCs and ACBs could participate in loans to independent power producers, so long as they sell more than 50 percent of the electricity that they generate to rural electric utilities that are eligible for RUS loans. Finally, BCs and ACBs could participate in loans that finance the import of agricultural commodities and products, aquatic products, and farm supplies for borrowers who are not eligible cooperatives, their subsidiaries, or their counterparties.

Section 4.18A(b) of the Act allows each FCB, ACB, and direct lender association to ''participate in any loan of a type *otherwise authorized under title I or II* made to a similar entity * * *.'' The FCA interprets this passage to mean that similar entity loans should still be compatible with the basic lending powers of each Farm Credit bank or association. In other words, section 4.18A(b) of the Act would, for example, authorize FLCAs to participate only in similar entity loans that are: (1) Secured by a first lien on real estate; and (2) mature within not fewer than 5 years, nor more than 40 years. Similarly, this statutory provision would permit PCAs to participate only in operating loans that mature within the time prescribed in section 1.10(b) of the Act. Accordingly, § 613.3300(c) reflects the FCA's interpretation of section 4.18A(b) of the Act. In the FCA's opinion, the above-cited passage in section 4.18A(b) of the Act is compatible with sections 1.5(12)(C) and 2.2(13) of the Act, which authorize FCS banks and direct lender associations to participate with non-System lenders only in the type of loans that such FCS institutions could originate.

Proposed § 613.3300(d) implements the restrictions that sections 3.1(11)(B)(i) and 4.18A(b) of the Act impose on loan participations to similar entities. Proposed § 613.3300(d)(1) reflects statutory lending limits for loan participations to similar entities. Under proposed § 613.3300(d)(1)(i)(A), the total amount of all loan participations that any FCB, ACB, or direct lender association may have outstanding under proposed § 613.3300(b)(1) to a single credit risk could not exceed 10 percent of its total capital. However, proposed § 613.3300(d)(1)(i)(B) would authorize the shareholders of any FCB, ACB, or direct lender to approve a higher lending limit, provided it does not exceed 25 percent of the institution's total capital. This provision would implement section 4.18A(b)(1) of the Act, which authorizes the FCA to permit a higher limit that would apply if shareholders approve. This proposal is consistent with the lending limits that FCA has established for loans to borrowers under titles I and II of the Act. Under proposed § 613.3300(d)(1)(ii), the total amount of all loan participations that any BC or ACB may have outstanding under proposed § 613.3300(b)(2) to a single credit risk could not exceed 10 percent of its total capital.

Under proposed § 613.3300(d)(2), the participation interest in the same loan

held by one or more Farm Credit bank(s) or association(s) could not, at any time, equal or exceed 50 percent of the principal amount of the loan. This regulatory provision would implement sections 3.1(11)(B)(i)(I)(bb) and 4.18A(b)(2) of the Act. Sections 3.1(11)(B) and 4.18A of the Act also limit the amount of loan participations to similar entities that each FCS bank or direct lender association may hold at any time to 15 percent of its total outstanding assets. Therefore, proposed § 613.3300(d)(3) applies this 15-percent portfolio limit to FCBs, BCs, ACBs, and direct lender associations.

Proposed § 613.3300(e) would implement requirements of sections 3.1(11)(B) and 4.18A(c)(3) concerning approval by other FCS banks and associations. Proposed § 613.3300(e)(1) implements a statutory provision that requires a direct lender association to obtain approval from its funding bank before it participates with a non-System lender in a loan to a similar entity. The FCA believes that a funding bank's decision to grant or deny approval under section 4.18A(c)(3) of the Act and proposed § 613.3300(e)(1) should rest exclusively on safety and soundness considerations that the transaction would have on the bank's financial position. Direct lender associations have not previously participated with non-System lenders in syndications and other multilender transactions that provide credit to ineligible borrowers. The FCA solicits comments from interested parties about how the final regulation can best accord equitable treatment to both funding banks and their affiliated associations.

Proposed § 613.3300(e)(2) would require a Farm Credit bank operating under title I of the Act or a direct lender association to comply with § 614.4070 before it participates in a similar entity loan in the chartered territory of another FCS institution. These provisions are designed to prevent intra-System competition without the consent of affected institutions. Requiring consent for similar entity participations would be consistent with the FCA's policy for out-of-territory participations and loans to eligible borrowers. However, some System institutions have informed the Agency that obtaining consent is time-consuming and impedes their ability to engage in participation transactions. As the Act is silent on this point, the FCA seeks public comment on whether consent for out-of-territory participations to similar entities ought to be required.

Proposed § 613.3300(e)(3) would implement section 4.18A(c)(1) of the Act by requiring a FCB or direct lender association to obtain BC or ACB approval before it participates in a loan to a similar entity that is eligible to borrow directly from a Farm Credit bank operating under title III of the Act. Both the Act and the proposed regulation require approval from the BC or ACB that, at the time of origination, has the greatest volume of loans (made under title III of the Act) in the State where the headquarters of the similar entity is located.

Similarly, proposed § 613.3300(e)(4) implements section 3.1(11)(B)(iii) of the Act by requiring a BC or ACB to obtain FCB approval before it participates with a non-System lender in a loan to a similar entity that is eligible to borrow directly from an FCB or a direct lender association under proposed §§ 613.3010 or 613.3030. The BC or ACB is required to obtain approval from the FCB(s) in whose chartered territory the similar entity conducts operations. As the FCA interprets section 3.1(11)(B)(iii) of the Act, approval by two FCBs would only be required when both banks are chartered to fund mortgage and short- and intermediate-term operating loans in the same chartered territory. When one FCB discounts production loans in a territory where another FCB funds solely mortgage loans, the BC or ACB would only be required to obtain consent from the FCB with the authority to finance the similar entity.

Pursuant to sections 3.1(11)(B)(iii) and 4.18A(c)(2) of the Act, proposed § 613.3300(e)(5) grants FCS institutions broad latitude to negotiate agreements that confer intra-System consents required by the Act and FCA regulations.

Proposed § 613.3300(f) reflects the FCA's determination that borrower rights do not apply to participation interests that FCBs, ACBs, and associations hold in similar entity loans. Sections 4.14A(a)(5) and 4.14A(a)(6)(A) of the Act require Farm Credit banks (operating under title I of the Act) and associations to accord borrower rights on loans to eligible borrowers that they make to bona fide farmers, ranchers, and aquatic producers and harvesters. Borrower rights would not apply to similar entity loans because the borrower is ineligible to borrow directly from an FCS bank or association and the loan is originated by a non-System lender.

The capitalization requirements for similar entity loan participations is addressed by proposed § 613.3300(g). This provision of the proposed regulation would require the capitalization bylaws of each Farm Credit bank and association to address whether, and to what extent, non-voting stock or participation certificates should be required for participation interests in similar entity loans. Proposed § 613.3300(g) is consistent with section 4.3A of the Act and § 615.5220.

## V. Miscellaneous

The FCA proposes to delete existing § 613.3060, which simply states that direct lender associations and other financing institutions (OFIs) are eligible to borrow from FCBs and ACBs. Regulations in subparts C and P of part 614 specifically implement the authority of FCBs and ACBs to fund and discount loans for direct lender associations and OFIs under section 1.7 of the Act rendering this section redundant.

The FCA also proposes to delete the following regulations: §§ 619.9025; 619.9030; 619.9040; 619.9065; 619.9080; 619.9090; 619.9100; 619.9120; 619.9150; 619.9160; 619.9190; 619.9220; 619.9270; 619.9280; 619.9300; and 619.9310. These regulations define certain terms that pertain to eligibility and scope of financing. Many of these definitions are not identical to either the existing or proposed regulations in part 613. This deletion will reduce duplication and potential for confusion.

Finally, the FCA proposes to relocate the nondiscrimination in lending regulations in subpart E of part 613 to a new part 626. Nondiscrimination is unrelated to eligibility and scope of financing, and therefore, the FCA believes that this topic should be addressed in a separate part of the regulations.

## List of Subjects

*12 CFR Part 613*

Agriculture, Banks, Banking, Credit, Rural areas.

*12 CFR Part 614*

Agriculture, Banks, Banking, Foreign Trade, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 618*

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistances.

*12 CFR Part 619*

Agriculture, Banks, Banking, Rural areas.

*12 CFR Part 626*

Advertising, Aged, Agriculture, Banks, Banking, Civil rights, Credit, Fair housing, Marital status discrimination, Sex discrimination, Signs and symbols.

For the reasons stated in the preamble, parts 613, 614, 618, 619, and

626 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

## PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

2. Subparts A, B, C, and D of part 613 are revised to read as follows:

**Subpart A—Financing Under Titles I and II of the Farm Credit Act**

Sec.
613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.
613.3010 Financing for processing or marketing operations.
613.3020 Financing for farm-related businesses.
613.3030 Rural home financing.

**Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act**

613.3100 Domestic lending.
613.3200 International lending.

**Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act**

613.3300 Participations and other interests in loans to similar entities.

## Subpart A—Financing Under Titles I and II of the Farm Credit Act

### § 613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Agricultural land* means land that is devoted to or available for the production of agricultural or aquatic products.

(2) *Bona fide farmer, rancher, or producer or harvester of aquatic products* means an individual or legal entity that either:

(i) Produces agricultural products or produces or harvests aquatic products to generate income; or

(ii) Owns agricultural land.

(3) *Individual* means a natural person who is either:

(i) A citizen of the United States; or

(ii) A foreign national who has been lawfully admitted into the United States for permanent residency pursuant to 8 U.S.C. 1101(a)(20) or on a visa pursuant to a provision in 8 U.S.C. 1101(a)(15) that authorizes such individual to own property or operate or manage a business.

(4) *Legal entity* means any partnership, corporation, trust, estate, or other legal entity, excluding legal entities eligible under title III of the Act, that is established pursuant to the laws of the United States, any State thereof, the Commonwealth of Puerto Rico, or the District of Columbia and is legally authorized to conduct a business.

(b) *Eligible borrowers.* A bona fide farmer, rancher, or producer or harvester of aquatic products is eligible to borrow under either title I or II of the Act.

(c) *Financing for agricultural or aquatic needs.* Any borrower who is eligible under paragraph (b) of this section may obtain financing for any agricultural or aquatic purpose.

(d) *Financing for other credit needs.*

(1) Individual eligible borrowers who are either citizens or permanent residents of the United States and are actively engaged in agricultural or aquatic production may also obtain financing for:

(i) Housing and domestic needs; and

(ii) Other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets.

(2) Individual eligible borrowers who either own agricultural land as an investment, or are non-resident foreign nationals, may obtain total financing for their housing, domestic and other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets.

(3) Legal entities may obtain financing for their other credit needs in an amount that does not exceed the market value of their agricultural assets only if:

(i) The securities of the borrower are not traded on a public exchange; and

(ii) More than 50 percent of the assets of the borrowing legal entity are used in agricultural or aquatic production.

### § 613.3010 Financing for processing or marketing operations.

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act, only if the borrower meets the following requirements:

(1) The borrower is either a bona fide farmer, rancher, or producer or harvester of aquatic products or is a legal entity in which eligible borrowers under § 613.3000(b) hold a controlling interest; and

(2) The borrower or an owner of a borrowing legal entity consistently produces some portion of the throughput used in the processing or marketing operation.

(b) *Portfolio restrictions for certain processing and marketing loans.* Processing or marketing loans to eligible borrowers who supply, on a consistent basis, less than 20 percent of the throughput are subject to the following restrictions:

(1) *Bank limitation.* The aggregate of such processing and marketing loans made by a Farm Credit bank shall not exceed 15 percent of all its outstanding retail loans at the end of the preceding fiscal year.

(2) *Association limitation.* The aggregate of such processing and marketing loans made by all direct lender associations affiliated with the same Farm Credit bank shall not exceed 15 percent of the aggregate of their outstanding retail loans at the end of the preceding fiscal year. Each Farm Credit bank, in conjunction with all its affiliated direct lender associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

(3) *Calculation of outstanding retail loans.* For the purposes of this paragraph, ''outstanding retail loans'' include loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

### § 613.3020 Financing for farm-related businesses.

(a) *Eligibility.* An individual or legal entity that furnishes services to farmers and ranchers that are directly related to their agricultural operations is eligible to borrow under titles I and II of the Act.

(b) *Purposes of financing.* An eligible farm-related business may obtain financing for its business needs, subject to the following requirements:

(1) An eligible farm-related business that derives more than 50 percent of its income (as consistently measured on either a gross sales or net sales basis) from furnishing services that are directly related to the agricultural operations of farmers and ranchers may obtain financing for all of its business needs.

(2) An eligible farm-related business that derives 50 percent or less of its income (as consistently measured on either a gross sales or net sales basis) from furnishing services that are directly related to the agricultural operations of farmers and ranchers may obtain financing only for those credit needs that are related to the provision of farm-related services.

### § 613.3030 Rural home financing.

(a) *Definitions.*

(1) *Rural homeowner* means an individual who is not a bona fide farmer, rancher, or producer or harvester of aquatic products.

(2) *Rural home* means a single-family moderately priced dwelling located in a

rural area that will be the occupant's principal residence.

(3) *Rural area* means a designated rural area within a State or the Commonwealth of Puerto Rico including communities that have a population of not more than 2,500 inhabitants based on the latest decennial census of the United States.

(4) *Moderately priced* means the price of any rural home that either:

(i) Satisfies the criteria in section 8.0 of the Act pertaining to rural home loans that collateralize securities that are guaranteed by the Federal Agricultural Mortgage Corporation; or

(ii) Is below the 75th percentile of housing values, ranked from the lowest value to the highest value in the rural area where it is located in accordance with the most recent edition of the Census of Housing, General Housing Characteristics published by the United States Bureau of the Census. System institutions may obtain copies of this document from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(b) *Eligibility.* Any rural homeowner is eligible to obtain financing on a rural home. No borrower shall have a loan from the Farm Credit System on more than one rural home at any one time.

(c) *Portfolio limitations.* (1) The aggregate of retail rural home loans by any Farm Credit Bank or agricultural credit bank shall not exceed 15 percent of the total of all of its outstanding loans at any one time.

(2) The aggregate of rural home loans made by each direct lender association shall not exceed 15 percent of the total of its outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank.

(3) The aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank shall not exceed 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

## Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

### § 613.3100 Domestic lending.

(a) *Definitions.*

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, which conducts business for the mutual benefit of its members and has the power to:

(i) Process, prepare for market, handle, or market farm or aquatic products;

(ii) Purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or

(iii) Furnish business and financially related services to its members.

(2) *Farm or aquatic supplies and farm or aquatic business services* are any goods or services normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or improve the welfare or livelihood of such persons.

(3) *Public utility* means a cooperative or other entity that is licensed under Federal, State, or local law to provide electric, telecommunication, cable television, water, or waste treatment services.

(4) *Rural area* means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States.

(5) *Service cooperative* means a cooperative that is predominately involved in providing business and financially related services (other than public utility services) to farmers, ranchers, aquatic producers or harvesters, or their cooperatives.

(b) *Cooperatives and other entities that serve agricultural or aquatic producers.* (1) *Eligibility for cooperatives.* A cooperative is eligible to borrow from a bank for cooperatives or an agricultural credit bank only if the following requirements are satisfied:

(i) Unless the bank's board of directors establishes by resolution a higher voting control threshold for any type of cooperative, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives shall be 80 percent except:

(A) Sixty (60) percent for a service cooperative;

(B) Sixty (60) percent for local farm supply cooperatives that have historically served the needs of a community that would not be adequately served by other suppliers and have experienced a reduction in the percentage of membership by agricultural or aquatic producers due to changed circumstances beyond their control; and

(C) Sixty (60) percent for local farm supply cooperatives that shall provide needed services to a community, and shall compete with a cooperative specified in § 613.3100(b)(1)(i)(B);

(ii) The cooperative deals in farm or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business it transacts with or for nonmembers, excluding from the total of member and non-member business, transactions with the United States, or any agencies or instrumentalities thereof, or services or supplies furnished by a public utility; and

(iii) The cooperative conforms with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable State law, whichever is less.

(2) *Other eligible entities.* The following entities are eligible to borrow from banks for cooperatives and agricultural credit banks:

(i) Any legal entity that holds more than 50 percent of the voting control of a cooperative that is an eligible borrower under paragraph (b)(1) of this section, and it uses the proceeds of the loan to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank;

(ii) Any legal entity in which an eligible cooperative has an ownership interest, *provided that* if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible cooperative owns in such entity multiplied by the value of the total assets of such entity; or

(iii) Any creditworthy private entity operated on a non-profit basis that satisfies the requirements for a service cooperative and complies with the requirements of paragraphs (b)(1)(i)(A) and (b)(1)(iii) of this section, and any subsidiary of such entity. An entity that is eligible to borrow under this paragraph shall be organized to benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers and harvesters who are its members.

(c) *Electric, telecommunication, and cable television utilities.*—(1) *Eligibility.* A bank for cooperatives or an agricultural credit bank may lend to:

(i) Cooperatives, other entities, or the subsidiaries of such cooperatives or other entities that:

(A) Have received a loan, loan commitment, insured loan, or loan guarantee from the Rural Utilities Service of the United States Department of Agriculture to finance rural electric and telecommunication services;

(B) Have received a loan or a loan commitment from the Rural Telephone

Bank of the United States Department of Agriculture; or

(C) Have been certified by the Rural Utilities Service of the United States Department of Agriculture to be eligible for a loan, loan commitment, or loan guarantee; or

(ii) Any legal entity that holds more than 50 percent of the voting control of any public utility that is an eligible borrower under paragraph (c)(1)(i) of this section, and uses the proceeds of the loan to fund the activities of the eligible subsidiary on the terms and conditions specified by the bank for cooperatives or agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services that are generally compatible with the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*, and regulations that the Secretary of Agriculture promulgates in 7 CFR parts 1610, 1710, 1712, 1714, 1735, 1737, 1739, and 1751. A subsidiary that is eligible to borrow under paragraph (c)(1) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank to operate a licensed cable television utility.

(3) *Restriction.* When an eligible utility, as defined in paragraph (c)(1)(i) of this section, owns less than 50 percent of any legal entity, the amount of financing provided by the bank for cooperatives or agricultural credit bank to the entity shall not exceed the percentage that the eligible cooperatives own in such entity multiplied by the value of the total assets of such entity.

(d) *Water and waste disposal facilities.*—(1) *Eligibility.* A cooperative or a public, quasi-public agency, body, or other public or private entity that, under the authority of State or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(5) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible under paragraph (d)(1) of this section solely for installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas.

(e) *Domestic lessors.* A bank for cooperatives or agricultural credit bank may lend to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the bank for use in their operations located inside of the United States.

**§ 613.3200 International lending.**

(a) *Definition.* For the purpose of this section only, the term ''farm supplies'' refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing or other capital goods which are not used in a farming or ranching operation.

(b) *Import transactions.* The following parties are eligible to borrow from a bank for cooperatives or an agricultural credit bank pursuant to section 3.7(b) of the Act for the purpose of financing the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States:

(1) An eligible cooperative as defined by § 613.3100(b);

(2) A counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and

(3) Any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

(c) *Export transactions.* Pursuant to section 3.7(b)(2) of the Act, a bank for cooperatives or an agricultural credit bank is authorized to finance the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country. The board of directors of each bank for cooperatives and agricultural credit bank shall adopt policies that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis. The total amount of balances outstanding on loans made under this paragraph shall not, at any time, exceed 50 percent of the capital of any bank for cooperatives or agricultural credit bank for loans that:

(1) Finance the export of agricultural commodities and products therefrom, aquatic products, or farm supplies that are not originally sourced from an eligible cooperative; and

(2) At least 95 percent of the loan amount is not guaranteed by a department, agency, bureau, board, or commission of the United States or a corporation that is wholly owned directly or indirectly by the United States.

(d) *Transactions involving international business operations.* A bank for cooperatives or an agricultural credit bank may finance a domestic or foreign entity which is at least partially owned by eligible cooperatives described in § 613.3100(b), and facilitates the international business operations of such cooperatives.

(e) *Restrictions.* (1) When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, the amount of financing that a bank for cooperatives or agricultural credit bank may provide to the entity for any import, export, or international business transaction shall not exceed the percentage of ownership that eligible cooperatives hold in such entity multiplied by the value of the total assets of such entity; and

(2) A bank for cooperatives or agricultural credit bank shall not finance the relocation of any plant or facility from the United States to a foreign country.

## Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

**§ 613.3300 Participations and other interests in loans to similar entities.**

(a) *Definitions.*

(1) *Participate* and *participation*, for the purpose of this section, refer to multilender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance.

(2) *Similar entity* means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

(b) *Similar entity transactions.* A Farm Credit bank or a direct lender association may participate with a lender that is not a Farm Credit System institution in loans to a similar entity that is not eligible to borrow directly under §§ 613.3000, 613.3010, 613.3020, 613.3100, or 613.3200, for purposes similar to those for which an eligible borrower could obtain financing from the participating FCS institution.

(c) *Compatibility with lending authorities under titles I and II of the Act.* Each direct lender association may participate in loans to similar entities under paragraph (b) of this section only to the extent that such loans are compatible with the association's applicable long-term real estate lending

authority under sections 1.7(a) and 1.10(a) of the Act or its short- and intermediate-term lending authorities under sections 1.10(b) and 2.4 of the Act.

(d) *Restrictions.* Participations by a Farm Credit bank or association in loans to a similar entity under this section are subject to the following limitations:

(1) *Lending limits.*

(i) *Farm Credit banks operating under title I of the Act and direct lender associations.* The total amount of all loan participations that any Farm Credit Bank, agricultural credit bank, or direct lender association has outstanding under paragraph (b) of this section to a single credit risk shall not exceed:

(A) Ten (10) percent of its total capital; or

(B) Twenty-five (25) percent of its total capital if a majority of the shareholders of the respective Farm Credit bank or direct lender association so approve.

(ii) *Farm Credit banks operating under title III of the Act.* The total amount of all loan participations that any bank for cooperative or agricultural credit bank has outstanding under paragraph (b) of this section to a single credit risk shall not exceed 10 percent of its total capital;

(2) *Percentage held in the principal amount of the loan.* The participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) shall not, at any time, equal or exceed 50 percent of the principal amount of the loan; and

(3) *Portfolio limitations.* The total amount of participations that any Farm Credit bank or direct lender association has outstanding under paragraph (b) of this section shall not exceed 15 percent of its total outstanding assets at the end of its preceding fiscal year.

(e) *Approval by other Farm Credit System institutions.* (1) No direct lender association shall participate in a loan to a similar entity under paragraph (b) of this section without the approval of its funding bank. A funding bank shall deny such requests only for safety and soundness reasons affecting the bank.

(2) No Farm Credit bank operating under title I of the Act or a direct lender association shall participate in a loan under paragraph (b) of this section to a similar entity that is located outside of its chartered territory unless it complies with the requirements of § 614.4070 of this chapter.

(3) No Farm Credit Bank or direct lender association shall participate in a loan to a similar entity that is eligible to borrow under § 613.3100(b) without the prior approval of the bank for cooperatives or agricultural credit bank that, at the time the loan is made, has the greatest volume of loans made under title III of the Act in the State where the headquarters office of the similar entity is located.

(4) No bank for cooperatives or agricultural credit bank shall participate in a loan to a similar entity that is eligible to borrow under §§ 613.3010 or 613.3020 without the prior consent of the Farm Credit Bank(s) in whose chartered territory the similar entity conducts operations.

(5) All approvals required under paragraph (e) of this section may be granted on an annual basis and under such terms and conditions as the various Farm Credit System institutions may agree.

(f) *Borrower rights.* The borrower rights requirements in title IV of the Act and § 614.4336 and subparts K, L and N of part 614 of this chapter do not apply to participations in loans to similar entities under paragraph (b) of this section.

(g) *Borrower stock requirements.* Pursuant to section 4.3A of the Act and § 615.5220 of this chapter, the capitalization bylaws of each Farm Credit bank and association shall determine whether, and to what extent, non-voting stock or participation certificates shall be required for participations in loans to similar entities.

## Subpart E—Nondiscrimination in Lending

### §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, 613.3175 (Subpart E) [Redesignated]

3. Subpart E of part 613, consisting of §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, and 613.3175 is redesignated as new part 626, consisting of §§ 626.6000, 626.6005, 626.6010, 626.6015, 626.6020, 626.6025, and 626.6030 respectively.

## PART 614—LOAN POLICIES AND OPERATIONS

4. The authority citation for part 614 is revised to read as follows:

**Authority:** 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

## Subpart A—[Amended]

5. Subpart A of part 614 is amended by removing the reference ''613.3020'' each place it appears and adding in its place ''613.3000''; by removing the reference ''613.3045'' each place it appears and adding in its place ''613.3010''; by removing the reference ''613.3040'' each place it appears and adding in its place ''613.3030''; by removing the reference ''613.3050'' each place it appears and adding in its place ''613.3020''; by removing the reference ''613.3110'' each place it appears and adding in its place ''613.3100(b)(1)''; and by removing the reference ''613.3110(c)'' each place it appears and adding in its place ''613.3100(b)(2), (c), and (d).''

6. Section 614.4010 is amended by removing the words ''export or'' each place they appear in paragraphs (d)(4) and (d)(5); by removing the reference ''(d)(3)'' and adding in its place ''(d)(4)'' in paragraph (d)(5); and by adding new paragraphs (d)(6) and (d)(7) to read as follows.

### § 614.4010 Agricultural credit banks.

* * * * *

(d) * * *

* * * * *

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements of § 613.3200(d) and (e) of this chapter.

* * * * *

7. Section 614.4020 is amended by removing the words ''export or'' each place they appear in paragraphs (a)(4) and (a)(5); by adding after the words ''bank's board'', the reference '', § 614.4233,'' in paragraph (a)(4); by removing the words ''board policy'' and adding in their place, the words ''policies of the bank's board, § 614.4233,'' in paragraph (a)(5); and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

### § 614.4020 Banks for cooperatives.

(a) * * *

* * * * *

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements in § 613.3200(d) and (e) of this chapter.

* * * * *

## Subpart E—Loan Terms and Conditions

8. Section 614.4222 is revised to read as follows:

### § 614.4222 Rural home loans.

A long-term real estate loan, including a revolving line of credit, on a rural home shall be secured by a first lien on the property, pursuant to § 614.4210, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the property unless the financing is provided exclusively for repairs, remodelling, or other improvements to the rural home, in which case the credit may be secured by other property or unsecured if warranted by the creditworthiness of the borrower.

9. Section 614.4233 is amended by revising the introductory paragraph to read as follows:

### § 614.4233 International loans.

Term loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act and § 613.3200 of this chapter to foreign or domestic parties who are not shareholders of the bank shall be subject to following conditions:

* * * * *

## Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

### § 614.4610 [Amended]

10. Section 614.4610 is amended by removing the words ''a association in the district'' and adding in their place, the words ''any association funded by the bank'' in the first sentence and removing the reference ''§ 613.3040(d)(2)'' and adding in its place the reference ''§§ 613.3010(b)(1) and 613.3030(c)(2)''.

## Subpart Q—Banks for Cooperatives Financing International Trade

11. The heading for subpart Q is amended by adding after the words ''Banks for Cooperatives'' the words ''and Agricultural Credit Banks''.

### § 614.4700 [Amended]

12. Section 614.4700 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place they appear in paragraphs (a), (b), and (h).

### § 614.4710 [Amended]

13. Section 614.4710 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place it appears in the introductory paragraph and paragraph (c); by adding after the words ''bank for cooperatives''' the words ''or agricultural credit bank's'' in paragraph (a)(1)(ii); by adding after the words ''bank for cooperatives'' the words ''or an agricultural credit bank'' each place they appear in paragraphs (a)(1), (a)(1)(i), (a)(3), (a)(5) and (b)(1).

### § 614.4720 [Amended]

14. Section 614.4720 is amended by adding after the words ''Banks for cooperatives'' the words ''and agricultural credit banks'' in the first sentence of the introductory paragraph.

### § 614.4800 [Amended]

15. Section 614.4800 is amended by adding after the words ''A bank for cooperatives'' the words ''or an agricultural credit bank'' in the first sentence.

### § 614.4810 [Amended]

16. Section 614.4810 is amended by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' each place they appear in paragraphs (a) and (b).

### § 614.4900 [Amended]

17. Section 614.4900 is amended by adding after the words ''a bank for cooperatives'' the words ''or an agricultural credit bank'' each place they appear in paragraphs (a) through (d); and by adding after the words ''banks for cooperatives'' the words ''and agricultural credit banks'' in the first sentence of paragraph (i).

## PART 618—GENERAL PROVISIONS

18. The authority citation for part 618 continues to read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

## Subpart A—Related Services

### § 618.8005 [Amended]

19. Section 618.8005 is amended by removing the reference ''§§ 613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045'' in paragraph (a) and adding in its place, the reference ''§§ 613.3000 (a) and (b), 613.3010, and 613.3300'' and by removing the reference ''§§ 613.3110 and 613.3120'' and adding in its place, the reference ''§§ 613.3100, 613.3200, and 613.3300'' in paragraph (b).

## PART 619—DEFINITIONS

20. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

### §§ 619.9025, 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 [Removed]

21. Sections 619.9025, 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 are removed.

## PART 626—NONDISCRIMINATION IN LENDING

22. The authority citation for part 626 is added to read as follows:

**Authority:** Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

### § 626.6025 [Amended]

23. Newly designated § 626.6025 is amended by removing the reference ''§ 613.3160(b)'' and adding in its place, the reference ''§ 626.6020(b)'' in paragraph (b).

* * * * *

Dated: September 5, 1995.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 95–22313 Filed 9–8–95; 8:45 am]

BILLING CODE 6705–01–P

## RAILROAD RETIREMENT BOARD

## 20 CFR Part 220

**RIN 3220–AA99**

## Determining Disability

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Board proposes to update its regulations to reflect a change in how it evaluates pain and other subjective symptoms when determining if an individual is disabled from all regular employment. Other changes are proposed to reflect changes in law and procedure.

**DATES:** Comments must be received by November 13, 1995.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

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

**SUPPLEMENTARY INFORMATION:** Courts have consistently held that disability for all regular employment under section 2(a)(1)(v) of the Railroad Retirement Act (45 U.S.C. 231a(a)(1)(v)) is synonymous with the inability to perform any substantial gainful activity under section 223(d) of the Social Security Act (42 U.S.C. 423(d)). Therefore, the Board has generally patterned its regulations dealing with the adjudication of claims for disability based upon the inability to engage in all regular employment (20 CFR Part 220) on regulations promulgated by the Department of Health and Human Services, Social Security Administration (20 CFR Part 404, Subpart P). On November 14, 1991, the Social Security Administration published a final rule (56 FR 57928) expanding its regulations pertaining to how it evaluates symptoms, including pain, in its disability adjudication. The Board has generally followed these regulations in adjudication of claims for disability based on inability to engage in regular employment and now proposes to amend its regulations to conform thereto.

Proposed § 220.100(f) explains how a symptom, such as pain, is considered when it appears as a criterion in the Listing of Impairments contained in Appendix 1 of this part. Appendix 1 contains medical criteria for finding a person disabled on medical factors alone without consideration of the person's age, education, and work experience.

The addition of proposed § 220.100(g) insures that the Listing of Impairments contained in Appendix 1 will at all times conform to Appendix 1 of Subpart P, 20 CFR, Part 404, of the Social Security Adminitration's disability regulations unless specifically indicated otherwise by regulation under this part.

Section 220.112(a) is proposed to be revised by eliminating the reference to remarried widow(ers) and surviving divorced spouses. Section 5103 of Public Law 101–508 revised the standard of disability for these groups of beneficiaries to require the consideration of other than medical factors, such as age, education, and experience, in determining disability for all substantial gainful activity for these groups. Prior to the amendment, only medical factors were required to be used in a disability determination for these beneficiaries.

The proposed rule completely revises § 220.114 to parallel the Social Security regulation dealing with the same subject. See § 404.1529 of this chapter. Proposed § 220.114 will provide guidance on the evaluation of symptoms, including pain. The proposed regulation conforms to the Board's current procedures and applicable court decisions on the evaluation of symptoms, especially pain, in making disability determinations.

Paragraph (a) of proposed § 220.114 is a general statement of how symptoms, such as pain, are considered in determining disability. It explains that the Board will consider a claimant's symptoms along with other objective medical evidence and other evidence relating to a claimant's condition.

Paragraph (b) of proposed § 220.114 explains that the Board will not find that pain will affect an individual's ability to do basic work activities unless the claimant first establishes that he or she has a medically determinable physical or mental impairment, supported by medical signs and laboratory findings, to which the allegation of pain can reasonably be related.

Paragraph (c) of proposed § 220.114 provides that when a symptom, such as pain, is established, the Board must then evaluate the intensity and persistence of the symptom with respect to how it limits the claimant's capacity for work. In making this evaluation the Board considers all available evidence, including the claimant's medical history, statements from the claimant and his treating physician, and statements from others who have knowledge of the claimant's situation.

Paragraph (d) of proposed § 220.114 explains how symptoms, such as pain, are evaluated in the sequential evaluation process required in disability adjudication.

The proposed rule would revise § 220.120 to explain that in determining the claimant's residual functional capacity the Board considers the claimant's symptoms, such as pain, and that such pain or other symptoms may limit the claimant's residual functional capacity beyond what can be determined from anatomical or physiological abnormalities taken alone. Consistent with the revision of section 220.120, proposed new § 220.135 explains that a claimant's symptoms, such as pain, may cause both exertional and nonexertional limitations. This proposed new section defines these terms. Only when the claimant's impairments and related symptoms impose solely exertional impairments do the rules set forth in Appendix 2 of this part direct a conclusion.

Proposed § 220.134 does for Appendix 2 of this part what the proposed amendment to § 220.100(g) does for Appendix 1 and insures that Appendix 2 will be consistent with the comparable appendix in the regulations under the Social Security Act. Appendix 2 contains the medical vocational guidelines or ''grids''. The grids direct a finding of disabled or not disabled based on specified limitations combined with the individual's age, education, and work experience. Appendix 2 was developed by the Social Security Administration after an extensive administrative rule-making procedure. The Board has adopted the Administration's Appendix 2 in its disability adjudication. This amendment will insure that the Board's Appendix 2 automatically remains in conformance with that of the Social Security Administration except where otherwise stated by this regulation.

Finally, the proposed amendment to § 200.00 of Appendix 2 conforms that section to the revised § 220.120.

The Board, with the agreement of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

### List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Part 220 of Title 20 of the

Code of Federal Regulations is proposed to be amended as follows:

## PART 220—DETERMINING DISABILITY

1. The authority for Part 220 continues to read as follows:

**Authority:** 45 U.S.C. 231a; 45 U.S.C. 231f.

2. Section 220.110 is amended by adding paragraphs (f) and (g) to read as follows:

### § 220.110 Listing of impairments in Appendix 1 of this part.

* * * * *

(f) *Symptoms as criteria of listed impairment(s).* Some listed impairment(s) include symptoms usually associated with those impairment(s) as criteria. Generally, when a symptom is one of the criteria in a listed impairment, it is only necessary that the symptom be present in combination with the other criteria. It is not necessary, unless the listing specifically states otherwise, to provide information about the intensity, persistence or limiting effects of the symptom as long as all other findings required by the specific listing are present.

(g) The Listing of Impairments found in Appendix 1 of this part is intended to be identical to the list promulgated by the Social Security Administration in Appendix 1 of Subpart P, 20 CFR Part 404. In addition to Appendix 1 of this part a claimant should also consult Appendix 1 of 20 CFR, Subpart P, Part 404.

### § 220.112 [Amended]

3. The penultimate sentence of § 220.112(a) is amended by removing the words ''Except in cases of remarried widows, widowers, and surviving divorced spouses, the'' and adding the word ''The'' to begin that sentence.

### § 220.114 [Amended]

4. Section 220.114 is revised to read as follows:

### § 220.114 Evaluation of symptoms, including pain.

(a) *General.* In determining whether the claimant is disabled, the Board considers all of the claimant's symptoms, including pain, and the extent to which the claimant's symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. By objective medical evidence, the Board means medical signs and laboratory findings as defined in § 220.113 (b) and (c) of this part. By other evidence, the Board means the kinds of evidence described in §§ 220.45 and 220.46 of this part. These include statements or reports from the claimant, the claimant's treating or examining physician or psychologist, and others about the claimant's medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how the claimant's impairment(s) and any related symptoms affect the claimant's ability to work. The Board will consider all of the claimant's statements about his or her symptoms, such as pain, and any description by the claimant, the claimant's physician or psychologist, or other persons about how the symptoms affect the claimant's activities of daily living and ability to work. However, statements about the claimant's pain or other symptoms will not alone establish that the claimant is disabled; there must be medical signs and laboratory findings which show that the claimant has a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of the claimant's pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that the claimant is disabled. In evaluating the intensity and persistence of the claimant's symptoms, including pain, the Board will consider all of the available evidence, including the claimant's medical history, the medical signs and laboratory findings and statements about how the claimant's symptoms affect the claimant. (Section 220.112 of this part explains how the Board considers opinions of the claimant's treating source and other medical opinions on the existence and severity of the claimant's symptoms, such as pain.) The Board will then determine the extent to which the claimant's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how the claimant's symptoms affect the claimant's ability to work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce symptoms, such as pain.* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness will not be found to affect the claimant's ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. The finding that the claimant's impairment(s) could reasonably be expected to produce the claimant's pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of the claimant's symptoms. The Board will develop evidence regarding the possibility of a medically determinable mental impairment when the Board has information to suggest that such an impairment exists, and the claimant alleges pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

(c) *Evaluating the intensity and persistence of symptoms, such as pain, and determining the extent to which the claimant's symptoms limit his or her capacity for work.* (1) *General.* When the medical signs or laboratory findings show that the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain, the Board must then evaluate the intensity and persistence of the claimant's symptoms so that it can determine how the claimant's symptoms limit the claimant's capacity for work. In evaluating the intensity and persistence of the claimant's symptoms the Board considers all of the available evidence including the claimant's medical history, the medical signs and laboratory findings, and statements from the claimant, the claimant's treating or examining physician or psychologist, or other persons about how the claimant's symptoms affect the claimant. The Board also considers the medical opinions of the claimant's treating source and other medical opinions as explained in § 220.112 of this part. Paragraphs (c)(2) through (c)(4) of this section explain further how the Board evaluates the intensity and persistence of the claimant's symptoms and how it determines the extent to which the claimant's symptoms limit the claimant's capacity for work, when the medical signs or laboratory findings show the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain.

(2) *Consideration of objective medical evidence.* Objective medical evidence is evidence obtained from the application

of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption. Objective medical evidence of this type is a useful indicator to assist the Board in making reasonable conclusions about the intensity and persistence of the claimant's symptoms and the effect those symptoms, such as pain, may have on the claimant's ability to work. The Board must always attempt to obtain objective medical evidence and, when it is obtained, will consider it in reaching a conclusion as to whether the claimant is disabled. However, the Board will not reject the claimant's statements about the intensity and persistence of the claimant's pain or other symptoms or about the effect the claimant's symptoms have on the claimant's ability to work solely because the available objective medical evidence does not substantiate the claimant's statements.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the Board will carefully consider any other information the claimant may submit about his or her symptoms. The information that the claimant, the claimant's treating physician or psychologist, or other persons provide about the claimant's pain or other symptoms (e.g., what may precipitate or aggravate the claimant's symptoms, what medications, treatments or other methods he or she uses to alleviate them, and how the symptoms may affect his or her pattern of daily living) is also an important indicator of the intensity and persistence of the claimant's symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which the claimant, the claimant's treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether the claimant is disabled. The Board will consider all of the evidence presented, including information about the claimant's prior work record, the claimant's statements about his or her symptoms, evidence submitted by the claimant's treating, examining or consulting physician or psychologist, and observations by Board employees and other persons. Section 220.112 of this part explains in detail how the Board considers and weighs treating source and other medical opinions about the nature and severity of the claimant's impairment(s) and any related symptoms, such as pain. Factors relevant to the claimant's symptoms, such as pain, which the Board will consider include:

(i) The claimant's daily activities;

(ii) The location, duration, frequency, and intensity of pain or other symptoms;

(iii) Precipitating and aggravating factors;

(iv) The type, dosage, effectiveness, and side effects of any medication the claimant takes or has taken to alleviate pain or other symptoms;

(v) Treatment, other than medication, the claimant receives or has received for relief of pain or other symptoms:

(vi) Any measures the claimant uses or has used to relieve pain or other symptoms (e.g., lying flat on the claimant's back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

(vii) Other factors concerning the claimant's functional limitations and restrictions due to pain or other symptoms.

(4) *How the Board determines the extent to which symptoms, such as pain, affect the claimant's capacity to perform basic work activities.* In determining the extent to which the claimant's symptoms, such as pain, affect the claimant's capacity to perform basic work activities, the Board considers all of the available evidence described in paragraphs (c)(1) through (c)(3) of this section. The Board will consider the claimant's statements about the intensity, persistence, and limiting effects of the claimant's symptoms, and the Board will evaluate the claimant's statements in relation to the objective medical evidence and other evidence, in reaching a conclusion as to whether the claimant is disabled. The Board will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the claimant's statements and the rest of the evidence, including the claimant's medical history, the medical signs and laboratory findings and statements by the claimant's treating or examining physician or psychologist or other persons about how the claimant's symptoms affect the claimant. The claimant's symptoms, including pain, will be determined to diminish the claimant's capacity for basic work activities to the extent that the claimant's alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* The Board follows a set order of steps to determine whether the claimant is disabled. If the claimant is not doing substantial gainful activity, the Board considers the claimant's symptoms, such as pain, to evaluate whether the claimant has a severe physical or mental impairment(s), and at each of the remaining steps in the process. Sections 220.100 and 220.101 of this part explain this process in detail. The Board also considers the claimant's symptoms, such as pain, at the appropriate steps in the Board's review when the Board considers whether the claimant's disability continues. Subpart O of this part explains the procedure the Board follows in reviewing whether the claimant's disability continues.

(1) *Need to establish a severe medically determinable impairment(s).* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are considered in making a determination as to whether the claimant's impairment or combination of impairment(s) is severe. (See § 220.100(b)(2) of this part.)

(2) *Decision whether the Listing of Impairments is met.* Some listed impairment(s) include symptoms, such as pain, as criteria. Section 220.110(f) of this part explains how the Board considers the claimant's symptoms when the claimant's symptoms are included as criteria for a listed impairment.

(3) *Decision whether the Listing of Impairments is equaled.* If the claimant's impairment is not the same as a listed impairment, the Board must determine whether the claimant's impairment(s) is medically equivalent to a listed impairment. Section 220.111 of this part explains how the Board makes this determination. Under § 220.111(b) of this part, the Board will consider equivalence based on medical evidence only. In considering whether the claimant's symptoms, signs, and laboratory findings are medically equal to the symptoms, signs, and laboratory findings of a listed impairment, the Board will look to see whether the claimant's symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, the Board will not substitute the claimant's allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the claimant's impairment(s) to that of a listed impairment. If the symptoms, signs, and laboratory findings of the claimant's impairment(s)

are equivalent in severity to those of a listed impairment, the Board will find the claimant disabled. If the Board determines the claimant's impairment(s) is not medically equivalent to a listed impairment, the Board will consider the impact of the claimant's symptoms on the claimant's residual functional capacity. (See paragraph (d)(4) of this section.)

(4) *Impact of symptoms (including pain) on residual functional capacity.* If the claimant has a medically determinable severe physical or mental impairment(s), but the claimant's impairment(s) does not meet or equal an impairment listed in Appendix 1 of this part, the Board will consider the impact of the claimant's impairment(s) and any related symptoms, including pain, on the claimant's residual functional capacity. (See § 220.120 of this part.)

**§ 220.120 [Revised]**

6. Section 220.120 is revised to read as follows:

**§ 220.120 The claimant's residual functional capacity.**

(a) *General.* The claimant's impairment(s) and any related symptoms, such as pain, may cause physical and mental limitations that affect what the claimant can do in a work setting. The claimant's residual functional capacity is what the claimant can still do despite the claimant's limitations. If the claimant has more than one impairment, the Board will consider all of the claimant's impairment(s) of which the Board is aware. The Board will consider the claimant's ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even the claimant's own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of the claimant's medical condition. Observations by the claimant's treating or examining physicians or psychologists, the claimant's family, neighbors, friends or other persons, of the claimant's limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the claimant's medical records to enable the Board to decide to what extent the claimant's impairment(s) keeps the claimant from performing particular work activities. This assessment of the claimant's remaining capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite the claimant's impairment(s). Then, using the guidelines in §§ 220.125 through 220.135 of this part, the claimant's vocational background is considered along with the claimant's residual functional capacity in arriving at a disability determination or decision. In deciding whether the claimant's disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant has experienced is related to the claimant's ability to work as discussed in § 220.178 of this part.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board first assesses the nature and extent of the claimant's physical limitations and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce the claimant's ability to do past work and other work.

(c) *Mental abilities.* When the Board assesses the claimant's mental abilities, the Board first assesses the nature and extent of the claimant's mental limitations and restrictions and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce the claimant's ability to do past work and other work.

(d) *Other abilities affected by impairment(s).* Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions may cause limitations and restrictions which affect other work-related abilities. If the claimant has this type of impairment(s), the Board considers any resulting limitations and restrictions which may reduce the claimant's ability to do past work and other work in deciding the claimant's residual functional capacity.

(e) *Total limiting effects.* When the claimant has a severe impairment(s), but the claimant's symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of this part, the Board will consider the limiting effects of all the claimant's impairment(s), even those that are not severe, in determining the claimant's residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of the claimant's impairment(s) and any related symptoms, the Board will consider all of the medical and nonmedical evidence, including the information described in § 220.114(c) of this part.

**§ 220.134 [Amended]**

7. Section 220.134 is amended by adding a new paragraph (d) to read as follows:

**§ 220.134 Medical-Vocational Guidelines in Appendix 2 of this part.**

* * * * *

(d) The medical-vocational guidelines found in Appendix 2 of this part are intended to be identical to those promulgated by the Social Security Administration in Appendix 2 of Subpart P, 20 CFR Part 404. In addition to Appendix 2 of this part a claimant shall also consult Appendix 2 of 20 CFR, Subpart P, Part 404.

8. A new § 220.135 is added to read as follows:

**§ 220.135 Exertional and nonexertional limitations.**

(a) *General.* The claimant's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit the claimant's ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect the claimant's ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's

classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 220.132 and 220.134 of this part explain how the Board uses the classifications of jobs by exertional levels (strength demands) which are contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect the claimant's ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 220.100(b)(5) and 220.180(h) of this part explain that if the claimant can no longer do the claimant's past relevant work because of a severe medically determinable impairment(s), the Board must determine whether the claimant's impairment(s), when considered along with the claimant's age, education, and work experience, prevents the claimant from doing any other work which exists in the national economy in order to decide whether the claimant is disabled or continues to be disabled. Paragraphs (b), (c), and (d) of this section explain how the Board applies the medical-vocational guidelines in Appendix 2 of this part in making this determination, depending on whether the limitations or restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), the Board considers that the claimant has only exertional limitations. When the claimant's impairment(s) and related symptoms only impose exertional limitations and the claimant's specific vocational profile is listed in a rule contained in Appendix 2 of this part, the Board will directly apply that rule to decide whether the claimant is disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the demands of jobs other than strength demands, the Board considers that the claimant has only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

(i) Difficulty functioning because of nervousness, anxiety, or depression;

(ii) Difficulty maintaining attention or concentrating;

(iii) Difficulty understanding or remembering detailed instructions;

(iv) Difficulty in seeing or hearing;

(v) Difficulty in tolerating some physical feature(s) of certain work settings, e.g., inability to tolerate dust or fumes; or

(vi) Difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If the claimant's impairment(s) and related symptoms, such as pain, only affect the claimant's ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 of this part do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2 of this part.

(d) *Combined exertional and nonexertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength demands and demands of jobs other than the strength demands, the Board considers that the claimant has a combination of exertional and nonexertional limitations or restrictions. If the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength demands and demands of jobs other than the strength demands the Board will not directly apply the rules in Appendix 2 of this part unless there is a rule that directs a conclusion that the claimant is disabled based upon the claimant's strength limitations; otherwise the rules provide a framework to guide the Board's decision.

**Appendix 2 [Amended]**

9. Appendix 2—Medical-Vocational Guidelines of part 220 is amended by revising paragraph (c) of section 200.00 to read as follows:

**§ 200.00 Introduction. * * ***

* * * * *

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, the Board considers his or her symptoms (such as pain), signs, and laboratory findings together with other evidence the Board obtains.

* * * * *

Dated: August 29, 1995.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 95–22103 Filed 9–8–95; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404 and 416

**RIN 0960–AD39**

## Payment for Vocational Rehabilitation Services Furnished Individuals During Certain Months of Nonpayment of Supplemental Security Income Benefits

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed rules.

**SUMMARY:** We are proposing to amend our regulations relating to payment for vocational rehabilitation (VR) services provided to recipients of supplemental security income (SSI) benefit payments based on disability or blindness under title XVI of the Social Security Act (the Act). These regulations reflect section 5037 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990). Section 5037 of OBRA 1990 added section 1615(e) to the Act which authorizes the Commissioner of Social Security (the Commissioner) to pay a State VR agency for costs incurred in furnishing VR services to an individual during certain months for which the individual did not receive SSI payments based on disability or blindness as well as during months for which the individual did receive such payments. We also propose to amend our regulations on VR payments to clarify certain rules and remove some outdated rules.

**DATES:** Your comments will be considered if we receive them no later than November 13, 1995.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to ''regulations@ssa.gov;'' or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD

21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 (410) 965–8471.

**SUPPLEMENTARY INFORMATION:** We are proposing to amend our regulations on payment for VR services provided to individuals receiving SSI benefits based on disability or blindness. These amended regulations will reflect section 5037 of OBRA 1990, Public Law 101–508, which added paragraph (e) to section 1615 of the Act. Our existing regulations concerning payment for such services carry out the provisions of section 1615(d) of the Act.

In general, section 1615(d) of the Act authorizes the Commissioner to reimburse a State VR agency for the costs incurred in providing VR services to individuals receiving SSI benefits under title XVI of the Act based on disability or blindness in three categories of cases. Specifically, section 1615(d) permits payment for VR services furnished to such individuals only in cases where: (1) The furnishing of such services results in the individual's performance of substantial gainful activity (SGA) for a continuous period of nine months; (2) the individual is continuing to receive benefits, despite his or her medical recovery, under section 1631(a)(6) of the Act because of his or her participation in a VR program; or (3) the individual, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude his or her successful rehabilitation. (In such a case of refusal to continue or cooperate in a VR program, payments are authorized only for the VR services provided prior to the cessation of VR participation. If the individual resumes participation, then payments are authorized for the VR services provided after participation is resumed only if all requirements for payment are met. These cases are described in sections 1615(d)(1), (2) and (3) of the Act, respectively, and in §§ 416.2211–416.2213 of our regulations.)

Under section 1615(d) of the Act, payment may be made for VR services furnished by a State VR agency, i.e., an agency administering a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. However, in the case of a State which is unwilling to participate or does not have such a plan for VR services, our regulation at 20 CFR 416.2204 provides that we may arrange for VR services for an SSI recipient who is disabled or blind through an alternative VR service provider (alternate participant) and pay such provider for the costs of services under the same terms and conditions that apply to State VR agencies. This regulation is based in part on section 222(d)(2) of the Act, which provides for the use of alternate participants in the VR payment program under title II of the Act (relating to the rehabilitation of social security disability beneficiaries), and on the authority provided to the Commissioner under section 1633(a) of the Act to make such administrative and other arrangements as may be necessary or appropriate to carry out title XVI of the Act, including making arrangements under title XVI in the same manner as they are made under title II.

Prior to the enactment of OBRA 1990, SSA was authorized to pay a State VR agency under section 1615(d) of the Act only for VR services that were provided to an individual during months for which the individual received SSI benefits based on disability or blindness, including benefits payable under section 1611 or 1619(a) of the Act or, for cases under section 1615(d)(2), discussed above, continued payment of such benefits under section 1631(a)(6) of the Act. This is reflected in our existing regulations at §§ 416.2201, 416.2203 and 416.2215(a)(2).

Section 5037 of OBRA 1990 added section 1615(e) to the Act to provide us the authority to pay a State VR agency under section 1615(d) for the costs described in that section that are incurred in providing VR services to an individual during certain months for which the individual was not receiving SSI benefits based on disability or blindness as well as during months for which the individual was receiving such benefits. Under section 1615(e) of the Act, payment may be made for VR services in a case described in section 1615(d)(1), (2) or (3) of the Act which are provided to an individual in a month for which the individual receives, i.e., is eligible for—

- SSI cash benefits under section 1611 or special SSI cash benefits under section 1619(a) of the Act (this is the same as under prior law);
- A special status for medicaid under section 1619(b) of the Act; or
- A federally administered State supplementary payment under section 1616 of the Act or section 212(b) of Public Law 93–66.

In addition, section 1615(e) of the Act permits payment for VR services provided in a month for which an individual was ineligible for the benefits or special status described above for a reason other than cessation of disability or blindness, if such month occurred prior to the 13th consecutive month of such ineligibility following a month for which the individual was eligible for such benefits or special status. This means that payment may be made for VR services furnished during a month for which an individual's benefit payment or special status for Medicaid under section 1619(b) was suspended.

Section 1615(e) of the Act became effective November 5, 1990, the date of the enactment of OBRA 1990, and applies to claims for reimbursement pending on or after that date. This amendment to the Act, which allows us to reimburse a State VR agency or alternate participant for VR services furnished during certain months for which an individual was not receiving SSI benefits, responds to a recommendation in the March 1988 Report of the Disability Advisory Council that the Congress amend the Act to permit SSA to pay for VR services provided in months when an individual is in suspension status.

## Proposed Changes to the VR Payment Regulations

The proposed rules will amend the existing regulations concerning the SSI VR payment program under title XVI of the Act to take account of the provisions of section 1615(e) of the Act which permit payment for VR services furnished during certain months for which a disabled or blind individual does not receive SSI benefits. The proposed rules also will make some other changes in the existing VR payment regulations to clarify certain rules and delete some obsolete rules. These changes affect the regulations governing the social security VR payment program under title II of the Act as well as the regulations concerning the SSI VR payment program under title XVI. The existing social security VR payment regulations carry out section 222(d) of the Act which contains provisions that are similar to the provisions of section 1615(d) of the Act, except that they apply to payment for VR services provided to individuals entitled to social security benefits based on disability under title II.

## Changes to the Regulations to Implement Section 1615(e) of the Act

We are proposing to amend § 416.2201 to explain that, in general, sections 1615(d) and (e) of the Act authorize payment for costs of VR services provided to certain disabled or

blind individuals who are eligible for SSI benefits, special SSI eligibility status, or federally administered State supplementary payments. In the proposed amendment to § 416.2201, we also explain that for the purpose of the SSI VR payment regulations, we refer to SSI benefits, special SSI eligibility status, or federally administered State supplementary payments as ''disability or blindness benefits.'' Additionally, we also propose to add a corresponding definition of ''disability or blindness benefits'' for this purpose in § 416.2203, discussed below.

The proposed amendment to § 416.2201 further explains that, subject to the other requirements and conditions for payment prescribed in the regulations, payment may be made for VR services which are furnished during a month(s) for which an individual is eligible for disability or blindness benefits or continues to receive such benefits under section 1631(a)(6) of the Act, or which are furnished during a month(s) for which the individual's disability or blindness benefits are suspended. This rule also is reflected in proposed § 416.2215, discussed below.

In § 416.2203, ''*Definitions*,'' we propose to delete the paragraph defining ''eligible,'' which discusses eligibility for SSI benefits only, and add a new paragraph to explain the meaning of ''disability or blindness benefits'' when used in the SSI VR payment regulations. The proposed rules provide that ''disability or blindness benefits,'' as defined for the SSI VR payment regulations only, refer to regular SSI benefits under section 1611 of the Act, special SSI cash benefits under section 1619(a) of the Act, special SSI eligibility status under section 1619(b) of the Act, and/or a federally administered State supplementary payment under section 1616 of the Act or section 212(b) of Public Law 93–66, for which an individual is eligible based on disability or blindness, as appropriate. Thus, in the proposed VR payment regulations, when we use the terms ''disability or blindness benefits'' with reference to the SSI program, we mean the benefits, status, or payments referred to in section 1615(e) of the Act. As used in this preamble, ''disability or blindness benefits'' has the same meaning as in the proposed rules. Further, in § 416.2203, we propose to define the phrase ''special SSI eligibility status'' to refer to the special status for Medicaid under section 1619(b) of the Act since this is the phrase we use to describe the special status in our other SSI regulations, e.g., §§ 416.260 and 416.264.

We also propose to amend several sections of the SSI VR payment regulations to replace phrases such as ''disability or blindness payment'' with the phrase ''disability or blindness benefits,'' and to substitute the term ''benefits'' for ''payment'' or ''payments,'' as the context requires. We are making these changes to §§ 416.2201(b), 416.2209(b) and (c), 416.2212, 416.2213(c), 416.2215(a) and (b), and 416.2216(c)(2).

Section 416.2215(a) of our existing regulations provides that in order for the State VR agency or alternate participant to be paid, the VR services must have been provided—(1) after September 30, 1981; (2) during months the individual is eligible for SSI disability or blindness payments; and (3) before completion of a continuous 9-month period of SGA. We propose to revise paragraph (a)(2) of § 416.2215 to provide that to be payable, the VR services must have been provided during a month or months for which—(i) the individual is eligible for disability or blindness benefits or continues to receive such benefits under section 1631(a)(6) of the Act; or (ii) the disability or blindness benefits of the individual are suspended due to his or her ineligibility for the benefits. We also propose to revise paragraph (a)(3) of § 416.2215 to provide that the VR services must have been provided prior to the completion of a continuous 9-month period of SGA or termination of disability or blindness benefits, whichever occurs first.

The proposed changes to § 416.2215 (a)(2) and (a)(3) provide cross-references to the regulations in Subpart M of 20 CFR Part 416 which contain our rules on suspension and termination of benefits under the SSI program. In general, these regulations provide that unless a termination of an individual's eligibility for benefits is required, an individual's benefits will be suspended for any month for which the individual no longer meets the requirements for eligibility for benefits under the SSI program. Termination of eligibility is required when benefits have been suspended for a period of 12 consecutive months, i.e., the individual remains ineligible for SSI benefits, special status for medicaid, and/or federally administered State supplementary payments for a continuous 12-month period. Eligibility for SSI benefits based on disability or blindness also terminates if the individual's disability or blindness ceases, unless the individual is participating in an approved VR program and the other requirements for the continuation of benefits under section 1631(a)(6) of the Act are met.

The proposed changes we are making to § 416.2215 (a)(2) and (a)(3) are consistent with the provisions of sections 1615 (d) and (e) of the Act. They permit payment for VR services which are provided either during a month(s) for which an individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or during a month(s) for which the individual is ineligible for disability or blindness benefits, for a reason other than cessation of disability or blindness, if such month(s) occurs prior to the 13th consecutive month of such ineligibility, i.e., a month(s) for which benefits are suspended but not terminated.

We also propose to amend the introductory paragraph of § 416.2217 to add a reference to section 1615(e) of the Act. In addition, we are proposing to make a change to the regulations governing the social security VR payment program under title II of the Act to reflect the expanded scope of the SSI VR payment program under title XVI resulting from section 1615(e) of the Act. We are proposing to amend § 404.2115(b) of the title II regulations to explain that if VR services are provided to an individual who is entitled to title II disability benefits and who also is or has been receiving disability or blindness benefits under the SSI program, the determination as to when VR services must have been provided may be made under either § 404.2115 or § 416.2215, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

**Other Changes to the VR Payment Regulations**

In addition to the changes to the regulations discussed above, we are proposing to amend the social security and SSI VR payment regulations to clarify certain rules relating to payment for VR services provided to an individual in a case where the individual, without good cause, refuses to continue or cooperate in a VR program. We also propose to delete some obsolete rules relating to the time periods within which claims for payment for VR services must be filed. We are making a few other nonsubstantive changes to certain provisions of the regulations affected by the proposed changes described above.

We are proposing to amend §§ 404.2113(c) and 416.2213(c) to indicate that if deductions are imposed against an individual's social security disability benefits because of VR refusal, or if an individual's disability or blindness benefits under the SSI

program are suspended because of VR refusal, the services for which payment may be made in such a case are those VR services which were provided to the individual prior to his or her VR refusal. If the individual thereafter resumes participation in a VR program and again receives VR services, payment may be made for those services only if the criteria for payment in § 404.2113 or § 416.2213 are again met, or if the services qualify for payment under one of the other provisions of the regulations permitting payment, i.e., §§ 404.2111, 404.2112, 416.2211, or 416.2212.

We also are proposing to delete the parenthetical phrase ''(suspension of benefits in cases described in § 404.2113)'' in existing § 404.2115(a)(3). This change is appropriate since under section 222(b) of the Act and § 404.422 of the title II regulations, a determination by us that a social security disability beneficiary has refused, without good cause, to accept VR services available to the individual results in our imposing deductions against social security benefits, rather than suspending benefits. This is reflected in existing §§ 404.2109(c) and 404.2113(c). To be consistent with these sections, we are making a change to § 404.2116(c)(2) to clarify that a beneficiary's VR refusal results in deductions against social security disability benefits, rather than a suspension of benefits.

Existing §§ 404.2116 (b)(2) and (c)(2) and 416.2216 (b)(2) and (c)(2) contain provisions which provide for the filing of claims for payment for VR services in certain cases within 12 months after the month of the initial publication of these sections in the **Federal Register**, 55 FR 8449 (March 8, 1990). This 12-month period ended March 31, 1991, the close of the 12th month following the month of publication in the **Federal Register**. Since this time period for filing a claim is no longer in effect, we are proposing to delete these provisions from the regulations.

We also are proposing to amend §§ 404.2116(c)(2) and 416.2216(c)(2) to clarify that the other 12-month period described in these sections for filing a claim for payment in the case of an individual's VR refusal begins after the first month for which deductions are imposed against social security disability benefits, or after the first month for which disability or blindness benefits under the SSI program are suspended, because of such VR refusal.

## Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

## Regulatory Procedures

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

These proposed regulations carry out section 1615(e) of the Act which allows payment for VR services under section 1615(d) of the Act provided during certain months for which an individual does not receive SSI benefits based on disability or blindness. They apply to States and certain alternate providers of VR services which are willing to provide services to disabled or blind SSI recipients, or social security disability beneficiaries, under our VR payment programs under the conditions specified in the regulations.

*Paperwork Reduction Act*

These proposed regulations impose no additional reporting or recordkeeping requirements subject to clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

## List of Subjects

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: August 23, 1995.

**Shirley Chater,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subpart V of part 404 and subpart V of part 416 of 20 CFR chapter III as follows:

## PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

## Subpart V—[Amended]

1. The authority citation for Subpart V of Part 404 is revised to read as follows:

**Authority:** Secs. 205(a), 222, and 702(a)(5) of the Social Security Act; (42 U.S.C. 405(a), 422, and 902(a)(5)).

2. Section 404.2113 is amended by revising the last sentence of paragraph (c) to read as follows:

### § 404.2113 Payment for VR services in a case of VR refusal.

* * * * *

(c) * * * A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual prior to his or her VR refusal if deductions have been imposed against the individual's monthly disability benefits for a month(s) after October 1984 because of such VR refusal.

3. Section 404.2115 is amended by revising paragraphs (a)(3) and (b) to read as follows:

### § 404.2115 When services must have been provided.

(a) * * *

(3) Before completion of a continuous 9-month period of SGA or termination of entitlement to disability benefits, whichever occurs first.

(b) If an individual who is entitled to disability benefits under this part also is or has been receiving disability or blindness benefits under part 416 of this chapter, the determination as to when services must have been provided may be made under this section or § 416.2215 of this chapter, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

4. Section 404.2116 is amended by revising paragraphs (b)(2) and (c)(2) to read as follows:

### § 404.2116 When claims for payment for VR services must be made (filing deadlines).

* * * * *

(b) * * *

(2) If no written notice was sent to the State VR agency or alternate participant,

a claim must be filed within 12 months after the month in which VR services end.

(c) * * *

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the first month for which deductions are imposed against disability benefits because of such VR refusal.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart V—[Amended]

1. The authority citation for subpart V of part 416 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1615, 1631(d)(1) and (e), and 1633(a) of the Social Security Act; (42 U.S.C. 902(a)(5), 1382d, 1383(d)(1) and (e), and 1383b(a)).

2. Section 416.2201 is amended by revising the introductory text of this section and revising paragraph (b) to read as follows:

**§ 416.2201 General.**

In general, sections 1615 (d) and (e) of the Social Security Act (the Act) authorize payment from the general fund for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled or blind individuals who are eligible for supplemental security income (SSI) benefits, special SSI eligibility status, or federally administered State supplementary payments. In this subpart, such benefits, status, or payments are referred to as disability or blindness benefits (see § 416.2203). Subject to the provisions of this subpart, payment may be made for VR services provided an individual during a month(s) for which the individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or for which the individual's disability or blindness benefits are suspended (see § 416.2215). Paragraphs (a), (b) and(c) of this section describe the cases in which the State VR agencies and alternate participants can be paid for the VR services provided such an individual under this subpart. The purpose of sections 1615 (d) and (e) of the Act is to make VR services more readily available to disabled or blind individuals, help State VR agencies and alternate participants to recover some of their costs in VR refusal situations, as described in § 416.2213, and ensure that savings accrue to the general fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

* * * * *

(b) The individual continues to receive disability or blindness benefits, even though his or her disability or blindness has ceased, under section 1631(a)(6) of the Act because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability or blindness rolls (see § 416.2212); or

* * * * *

3. Section 416.2203 is amended by removing the definition of ''Eligible'' and adding 2 new definitions in alphabetical order to read as follows:

**§ 416.2203 Definitions.**

* * * * *

*Disability or blindness benefits,* as defined for this subpart only, refers to regular SSI benefits under section 1611 of the Act (see § 416.202), special SSI cash benefits under section 1619(a) of the Act (see § 416.261), special SSI eligibility status under section 1619(b) of the Act (see § 416.264), and/or a federally administered State supplementary payment under section 1616 of the Act or section 212(b) of Public Law 93–66 (see § 416.2001), for which an individual is eligible based on disability or blindness, as appropriate.

* * * * *

*Special SSI eligibility status* refers to the special status described in §§ 416.264 through 416.269 relating to eligibility for medicaid.

4. Section 416.2209 is amended in paragraph (b) by removing ''payments'' and adding ''benefits'' in its place and in paragraph (c) by removing ''payment'' and adding ''benefits'' in its place.

5. Section 416.2212 is amended by revising the section heading and revising the first and second sentences to read as follows:

**§ 416.2212 Payment for VR services in a case where an individual continues to receive disability or blindness benefits based on participation in an approved VR program.**

Section 1631(a)(6) of the Act contains the criteria we will use in determining if an individual whose disability or blindness has ceased should continue to receive disability or blindness benefits because of his or her continued participation in an approved VR program. A VR agency or alternate participant can be paid for the cost of VR services provided to an individual if the individual was receiving benefits based on this provision in a month(s) after October 1984 or, in the case of a blindness recipient, in a month(s) after March 1988. * * *

6. Section 416.2213 is amended by revising the last sentence of paragraph (c) to read as follows:

**§ 416.2213 Payment for VR services in a case of VR refusal.**

* * * * *

(c) * * * A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual prior to his or her VR refusal if the individual's disability or blindness benefits have been suspended for a month(s) after October 1984 because of such VR refusal.

7. Section 416.2215 is revised to read as follows:

**§ 416.2215 When services must have been provided.**

(a) In order for the VR agency or alternate participant to be paid, the services must have been provided—

(1) After September 30, 1981;

(2) During a month(s) for which—

(i) The individual is eligible for disability or blindness benefits or continues to receive such benefits under section 1631(a)(6) of the Act (see § 416.2212); or

(ii) The disability or blindness benefits of the individual are suspended due to his or her ineligibility for the benefits (see subpart M of this part concerning suspension for ineligibility); and

(3) Before completion of a continuous 9-month period of SGA or termination of disability or blindness benefits, whichever occurs first (see subpart M of this part concerning termination of benefits).

(b) If an individual who is receiving disability or blindness benefits under this part, or whose benefits under this part are suspended, also is entitled to disability benefits under part 404 of this chapter, the determination as to when services must have been provided may be made under this section or § 404.2115, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

8. Section 416.2216 is amended by revising paragraphs (b)(2) and (c)(2) to read as follows:

**§ 416.2216 When claims for payment for VR services must be made (filing deadlines).**

* * * * *

(b) * * *

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months

after the month in which VR services end.

(c) * * *

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the first month for which disability or blindness benefits are suspended because of such VR refusal.

9. Section 416.2217 is amended in the introductory text of the section by adding ''and (e)'' after ''section 1615(d).''

[FR Doc. 95–22175 Filed 9–8–95; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Ch. 1

### Meeting of the Indian Self-Determination Negotiated Rulemaking Committee

**AGENCY:** Bureau of Indian Affairs, Interior, Indian Health Service, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Secretary of the Interior (DOI) and the Secretary of Health and Human Services (DHHS) have established an Indian Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended.

The Department have determined that the establishment of this committee is in the public interest and will assist the agencies in developing regulations authorized under section 107 of the ISDEAA. The agenda planned for the week includes meetings of work groups as well as the full committee. Work groups will be finalizing draft regulatory language and recommending adoption by the full committee. The full committee will review and give approval of such language for publication in the **Federal Register**, as a Notice of Proposed Rulemaking (NPRM). This will be the final meeting of the committee prior to publication of the NPRM.

**DATES:** The committee and appropriate workgroups will meet on the following days, beginning at approximately 8:30 a.m. and ending at approximately 5 p.m. on each day: Tuesday, September 26; Wednesday, September 27; and Thursday, September 28, 1995.

**ADDRESSES:** All meetings September 26 through September 28, 1995, will be held at the Doubletree Inn (previously Ramada Inn), 7801 Leesburg Pike, Falls Church, Virginia 22043, telephone (703) 893–1340.

Written statements may be submitted to Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street, NW, MS: 4627–MIB, Washington, DC 20420, telephone (202) 208–3708.

**FOR FURTHER INFORMATION CONTACT:** Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS: 4627–MIB, Washington, DC 20240, telephone (202) 208–3708.

Mrs. Merry Elrod, Acting Director, Division of Self-Determination, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A–05, Rockville, MD, 20857, telephone (301) 443–1044.

**SUPPLEMENTARY INFORMATION:** The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advance registration.

Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent that time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the addresses listed above. Summaries of committee meetings will be available for public inspection and copying ten days following each meeting at the same addresses. In addition, the materials received during the input sessions are available for inspection and copying at the same addresses.

Dated: September 5, 1995.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 95–22552 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–02–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1952

### U.S. Virgin Islands State Plan for Occupational Safety and Health

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** U.S. Virgin Islands state plan: Notice of reconsideration of 18(e) determination; proposed reassumption of concurrent Federal enforcement authority; request for written comments; notice of opportunity to request informal public hearing.

**SUMMARY:** The U.S. Virgin Islands operates a state occupational safety and health program or ''state plan'' which is federally approved under section 18 of the Occupational Safety and Health Act. In 1984, the Occupational Safety and Health Administration made a ''final approval'' determination under section 18(e) of the Act which in effect gave exclusive regulatory authority over all safety and health issues covered by the state plan to the Virgin Islands Department of Labor. (The Virgin Islands State Plan is limited in coverage to safety issues, in the private sector.) The most recent Federal monitoring of the state plan indicates that state plan enforcement has ceased to be ''at least as effective as'' that provided under OSHA and that other 18(e) requirements are no longer being met. In response to that finding, the Virgin Islands Commissioner of Labor has agreed to voluntarily relinquish the State's final approval status, has requested the reassertion of concurrent Federal enforcement jurisdiction, and has pledged to accomplish the necessary corrective action. As a result, the affirmative 18(e) determination is under reconsideration by the Assistant Secretary of Labor for Occupational Safety and Health, (the ''Assistant Secretary'') pursuant to procedures set forth in 29 CFR 1902.47 *et seq.* Reconsideration and subsequent revocation/suspension of the 18(e) determination will result in reinstatement of concurrent enforcement authority by Federal OSHA over occupational safety issues in the U.S. Virgin Islands pending State corrective action. This notice affords an opportunity for the public to submit written information, views and comments on the proposed reconsideration. A similar notice will be published by the Virgin Islands within the next 10 days.

OSHA is soliciting written comment from interested persons in its reconsideration of the U.S. Virgin Islands State Plan's affirmative 18(e) determination to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public may also submit requests for an informal hearing; if the Assistant Secretary determines that substantial issues are presented which a hearing would likely resolve, an informal hearing will be scheduled in accordance with 29 CFR 1902.49(c).

**DATES:** Comments and requests for an informal hearing must be received by October 16, 1995.

**ADDRESSES:** Written comments and requests for an informal hearing must be submitted in quadruplicate to the Docket Office. Telefaxes will be accepted, however, a hard copy original with three (3) copies must also be submitted. All comments and requests must be submitted to Docket No. T–030, U.S. Department of Labor, room N2625, 200 Constitution Avenue NW., Washington, DC 20210 (202) 219–7894. Written comments, and requests for an informal hearing will be made available for public inspection and copying in the Docket Office, Room n2625 at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Copies of the applicable evaluation reports and the State's letters and Corrective Action Plan may be inspected and copied during normal business hours at the OSHA Technical Data Center (TDC), Room N2625, 200 Constitution Avenue NW., Washington, DC; the approved plan may be inspected and copied during normal business hours at the OSHA Office of State Programs (OSP), Room N3700, 200 Constitution Avenue NW., Washington, DC; copies of the approved plan, the applicable evaluation reports and the State's letters and Corrective Action Plan may be inspected and copied during normal business hours at the Office of the Regional Administrator, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; Puerto Rico Area Office, Occupational Safety and Health Administration, U.S. Courthouse & FOB, Carlos Chardon Avenue, Room 555, Hato Rey, Puerto Rico 00918, and the Virgin Islands Department of Labor, Occupational Safety and Health Division, 3012 Golden Rock, Christiansted, St. Croix, Virgin Islands 00820.

**FOR FURTHER INFORMATION CONTACT:** Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 219–8148.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 3(7) of the Act makes several U.S. territories and possessions including the U.S. Virgin Islands eligible to submit State plans under section 18. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are ''at least as effective as'' Federal standards and enforcement, ''initial approval'' is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial-approval period as provided by Section 18(e) of the Act.

The Virgin Islands state plan received initial federal OSHA plan approval on September 11, 1973, 38 FR 16775. A description of the plan and a basic chronology of its submission and federal approval is codified in the Code of Federal Regulations at 29 CFR Part 1952, Subpart S. The Virgin Islands Department of Labor, Division of Occupational Safety and Health (VIDOSH) was designated as the state agency with responsibility for administering the state plan, and operations under the plan commenced at the time of initial plan approval in 1973. The Virgin Islands state plan covers all issues of occupational safety in workplaces located within the Virgin Islands. Although in the public sector the state plan covers occupational health as well as safety, in the private sector the state plan does not exercise enforcement authority over occupational health issues; enforcement of health standards and other health-related requirements in the Virgin Islands private sector is provided by the U.S. Department of Labor.

During the 1970's the Virgin Islands plan proceeded through the various stages of federal approval, and after certification of completion of all required developmental steps in 1981 (29 CFR 1952.252; 46 FR 46808, 09–22–81), Federal OSHA began to evaluate the program for final approval under section 18(e) of the Act in accordance with procedures at 29 CFR 1902.30 *et seq.*, to determine, on the basis of actual operations under the plan, whether the criteria for final approval were being satisfied. An 18(e) or ''final approval'' determination results in the relinquishment of Federal concurrent enforcement authority in the State with respect to occupational safety and/or health issues covered by the plan, 29 U.S.C. 667(e).

Based on OSHA's evaluation of operations under the plan, and after opportunity for public comment the Assistant Secretary determined that in actual operations, the Virgin Islands State plan was ''at least as effective as'' the Federal program in providing safe and healthful employment and places of employment, and met all other criteria for final State plan approval under Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902 including compliance staffing consistent with benchmarks established pursuant to *AFL–CIO* v. *Marshall* 570 F.2d 1030 (D.C. Cir. 1978). Accordingly, the Virgin Islands plan was granted final approval, 29 CFR 1952.253, and concurrent Federal enforcement authority over occupational safety was relinquished under section 18(e) of the Act effective April 17, 1984. 29 CFR 1952.254; 49 FR 16755 (April 20, 1984).

## Summary of Current Situation

The U.S. Virgin Islands state program is experiencing significant difficulties, and exhibiting deficiencies in many aspects of its 18(e) program, as documented in the three most recent Evaluation reports covering 1991 through 1994 as prepared by OSHA's Region II in New York. Despite many past assurances to OSHA that the administering agency will correct the deficiencies and satisfactorily address the problems, the deficiencies remain unabated. The most basic activities of the program, including scheduling of inspections, identification and citation of hazards, proposal of penalties, review of contested cases, staff training, and response to new Federal standards and Federal program changes are not being accomplished in an effective manner. Accompanied visits and case file reviews have uncovered significant deficiencies in critical enforcement areas, including inspection preparation, inspection procedures, hazard recognition, abatement assurance, case file documentation, and adjudication of contested cases. Additional deficiencies also exist in fiscal administration and reporting, and maintenance of sufficient, qualified staff. The severity of the program's present deficiencies along with the record of their last five (5) years of somewhat problematic performance has resulted in the mutual conclusion by OSHA's Regional Administrator and the Virgin Islands newly appointed Commissioner of Labor that the VIDOSH program does not currently meet the criteria requisite to retain an affirmative determination under Section 18(e) of the Act, as it is not operating in a manner that can be judged ''at least as effective as'' the Federal OSHA program.

By letter dated July 19, 1995, Lisa Harris-Moorhead, Virgin Islands' Commissioner of Labor indicated the state's agreement to voluntary relinquishment of the U.S. Virgin Islands State plan's final approval status under Section 18(e) of the Act and to reassertion of concurrent Federal enforcement jurisdiction. On behalf of the Governor and his new administration she committed the state to making the Virgin Islands' workplaces safe and healthful and to ''marked improvement'' in the state's program by December.

**Proposed Reconsideration of 18(e) Determination and Reinstatement of Concurrent Federal Enforcement Authority**

Section 18(f) of the Act requires the Assistant Secretary to make a continuing evaluation of the manner in which each state plan is being administered. Under regulations at 29 CFR 1902.32(e), after a State's plan has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) and will continue to be ''as least as effective as'' the Federal program. A failure to comply with this or other 18(e) requirements may result in the reconsideration and revocation or suspension of the affirmative 18(e) determination and the resumption of Federal enforcement authority, or, if circumstances warrant, the commencement of proceedings for the withdrawal of approval of the plan pursuant to 29 CFR Part 1955 and section 18(f) of the Act.

Under the authority of section 18 of the Act and 29 CFR 1902.32(f) and 1902.47 *et seq.*, the Assistant Secretary on his own initiative and in response to the state's request is seeking public comment on his proposal to reconsider the U.S. Virgin Islands State plan's affirmative 18(e) determination and reinstate concurrent Federal enforcement authority in order to assure adequate worker protection and the effective enforcement of safety standards and regulations. A decision revoking or suspending the state's 18(e) status would not terminate federal approval of the state plan and would not affect the legal authority of the Virgin Islands to carry on enforcement activities under the state plan. Instead, revocation/suspension of a state's 18(e) determination restores the state plan to ''initial approval'' status and permits the resumption of concurrent federal enforcement activity including independent Federal or joint state and Federal inspections resulting in the issuance of appropriate Federal citations and penalties and the review of contested cases by the Occupational Safety and Health Review Commission (OSHRC). Federal enforcement activity will reflect all new OSHA compliance initiatives to promote voluntary compliance through common sense regulation and appropriately rewarding employers who take affirmative steps to assure worker protection. OSHA believes such action is an appropriate response to current circumstances in the Virgin Islands; restoring the state plan to its pre-1984 ''initial approval'' status acknowledges the deficiencies presently existing in the state program, which, while serious and extensive, do not in the Assistant Secretary's judgement warrant the commencement at this time of proceedings under 29 CFR Part 1955 and section 18(f) of the Act to entirely withdraw state plan approval. At the same time, reverting the state's federal approval status from final to initial approval would allow OSHA to exercise discretionary concurrent enforcement authority to compensate for the current deficiencies in state plan enforcement and allow the state sufficient time and assistance to improve its program. Pending a final decision, Federal OSHA compliance officers may accompany State inspectors, effective immediately, but no Federal citations will be issued until a final decision on this action is published.

Final approval status may be renewed or a process to withdraw Federal approval of the State plan may be initiated subsequently, depending on the results of State efforts to address the identified State plan deficiencies.

Signed at Washington, DC this 5th day of September, 1995.

**Joseph A. Dear,**

*Assistant Secretary of Labor.*

[FR Doc. 95–22446 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–26–M

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 17

**RIN 2900–AH61**

## Adult Day Health Care Program; Community Residential Care Program; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders

**AGENCY:** Veterans Health Administration, VA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to update references to material incorporated by reference in the Department of Veterans Affairs regulations concerning the Adult Day Health Care Program, the Community Residential Care Program, and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders. These regulations incorporate by reference various editions of the National Fire Protection Association Life Safety Code entitled ''NFPA 101, Life Safety Code'' and ''NFPA 101A, Guide on Alternative Approaches to Life Safety.'' It is proposed to substitute the current edition (1994) of the Life Safety Code and the current edition (1995) of the Guide on Alternative Approaches to Life Safety for earlier editions. The regulations are designed to ensure that buildings used for treatment and residential services for veterans meet the fire and safety requirements of the Life Safety Code and the Guide on Alternative Approaches to Life Safety. Also, this document amends the current ''Contract Program for Veterans With Alcohol and Drug Dependence Disorders'' regulations which, prior to the effective date of this document, provided that the Director, Facility Engineering, Planning, and Construction Office, was delegated authority to grant certain equivalencies or variances to building requirements. This delegation of authority is removed and instead such delegation of authority is granted to each of the Regional Directors of the Veterans Health Administration.

**DATES:** Comments must be received on or before November 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Schoeps, Chief, Community Care Programs, Veterans Health Administration, Department of Veterans Affairs, (202) 565–7530, for issues relating to the Adult Day Health Care Program and the Community Residential Care Program; Karen G. Boies, Ph.D., Deputy Associate Director for Addictive Disorders and Psychiatric Rehabilitation, Veterans Health Administration, Department of Veterans Affairs, (202) 565–7316, for issues relating to the Contract Program for Veterans With Alcohol and Drug Dependence Disorders.

**ADDRESSES:** Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that

they are submitted in response to ''RIN 2900–AH61.'' All written comments will be available for public inspection in the Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**SUPPLEMENTARY INFORMATION:** The regulations affected by this document are authorized under provisions of 38 U.S.C. as follows:

Adult Day Health Care Program—38 U.S.C. 1712; Community Residential Care Program—38 U.S.C. 1730; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders—38 U.S.C. 501 and 38 U.S.C. 1720A

## Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. In all likelihood, only similar entities that are small entities would conduct activities affected by this rule. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

## List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental Health, Drug Abuse, Foreign Relations, Government Contracts, Grants Program—Health, Health Care, Health Facilities, Health Professions, Medical Devices, Medical Research, Mental Health Programs, Nursing Homes, Philippines, Veterans.

Approved: August 29, 1995.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

2. In § 17.51e, paragraph (c)(2) is revised to read as follows:

### § 17.51e Adult day health care in private facilities.

* * * * *

(c) * * *

(2) The institution shall meet the requirements of chapters 1–7, 10–11, and 31 of the National Fire Protection Association's Life Safety Code, entitled NFPA 101 Life Safety Code 1994, dated February 11, 1994 (which is incorporated by reference). Incorporation of the 1994 edition of the Life Safety Code was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and at the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from: National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.) The institution shall provide sufficient staff to assist patients in the event of fire or other emergency.

* * * * *

3. In § 17.51j, paragraph (a)(2) is revised to read as follows:

### § 17.51j Approval of community residential care facilities.

* * * * *

(a) * * *

(2) Meet the requirements of chapters 1–7, 22–23, and 31 of the 1994 edition of the National Fire Protection Association's Life Safety Code, NFPA 101, and the 1995 edition of NFPA 101A, Guide on Alternative Approaches to Life Safety (which are incorporated by reference). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of the 1994 edition of the Life Safety Code and the 1995 edition of NFPA 101A was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

* * * * *

4. In § 17.53b, paragraph (a)(1)(i) is revised to read as follows:

### § 17.53b Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements of the applicable residential occupancy chapters 1–7, 22–23, and 31 of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA). Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1–800–344–3555.) The 1994 edition of the Life Safety Code is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

* * * * *

5. In § 17.53c, paragraph (a)(1)(i) is revised to read as follows:

### § 17.53c Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements of the applicable business occupancy chapters 1–7, 26–27, and 31 of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1–800–344–3555.) The 1994 edition of the Life Safety Code (NFPA 101) is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any Equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

* * * * *

[FR Doc. 95–22311 Filed 9–8–95; 8:45 am]

BILLING CODE 8320–01–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 15 and 32**

**[FRL–5219–6]**

**RIN 2030–AA38**

## Suspension, Debarment and Ineligibility for Contracts, Assistance, Loans and Benefits

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

**ACTION:** Proposed rule.

**SUMMARY:** In this notice, EPA proposes to remove Part 15 (''Administration of the Clean Air Act and the Clean Water Act with Respect to Contracts, Grants, and Loans—List of Violating Facilities'') from Title 40 of the Code of Federal Regulations. EPA also proposes that 40 CFR Part 32, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drugfree Workplace (Grants), be amended simultaneously by adding procedures needed to administer the ineligibility provisions of the Clean Air Act (CAA), Clean Water Act (CWA), and EO 11738.

**DATES:** Comments must be submitted on or before November 13, 1995.

**ADDRESSES:** Comments may be mailed to Robert Meunier, Director, Suspension and Debarment Division (3902F), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or delivered to EPA, Fairchild Building, 499 South Capitol St., room 217 between 8 a.m. and 4:30 p.m.

Comments and data may also be submitted electronically by electronic mail (e-mail) to: meunier.robert@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [FRL–5219–6]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Meunier, Director, Suspension and Debarment Division (3902F), 401 M Street S.W., Washington, DC 20460. Telephone: (202) 260–8025.

**SUPPLEMENTARY INFORMATION:**

*A. Background*

Last year, the EPA Administrator decided to reorganize the former Office of Enforcement (OE), now the Office of Enforcement and Compliance Assurance (OECA). As part of that reorganization, administrative responsibility for the Part 15 CAA and CWA contractor listing program was transferred from OECA to the Office of Administration and Resources Management (OARM) so that all EPA debarment functions would be conducted by a single office.

On October 5, 1994, EPA published technical amendments to 40 CFR Parts 15 and 32 to reassign specific functions from OECA to OARM. (See, 59 Fed. Reg. 50691). In the preamble to those amendments, EPA notified the public of its intention to consolidate the two rules into a single rule in 1995.

These proposed amendments would eliminate Part 15 in its entirety, and amend EPA's suspension and debarment rule at Part 32 by adding the few procedures needed to implement the statutorily mandated ineligibility provisions of the CAA and the CWA.

In addition to significantly reducing regulatory text, the proposed rule will reduce the confusion that occurred because EPA had one set of procedures for mandatory and discretionary facility ineligibility (Part 15), and another for discretionary suspension and debarment actions (Part 32). When the proposed amendments become final, pre-conviction cases involving violations of the CAA and CWA will, like cases involving other environmental statutes, be candidates for suspension and proposed debarment under 40 CFR Part 32 and 48 CFR Subpart 9.4.

The following regulatory provisions will be affected under this proposed rule.

Part 15 of Title 40 of the Code of Federal Regulations will be removed.

Part 32 of Title 40 of the Code of Federal Regulations will be amended to incorporate references to the CAA and CWA ineligibility provisions in the title, table of contents, and authorities section.

General references will be added to the purpose clauses at § 32.100(e) and the definitions of ''facility'' and ''CAA or CWA ineligibility'' will be added to the definitions at § 32.105.

New paragraphs (d) are added to §§ 32.110 (Coverage) and 32.115 (Policy), to indicate that CAA and CWA ineligibility are within the scope of this rule; and the statutory authority of agency heads to grant exceptions to CAA and CWA ineligible facilities has been added to the exceptions provisions at § 32.215(a) according to the standards set forth in the statute.

A significant addition being proposed is a new paragraph (c) in the settlement provisions of § 32.315. The new text would state that, as part of a comprehensive settlement agreement and before a judgment of conviction is entered, the EPA debarring official may certify that the condition giving rise to the CAA or CWA violation has been corrected. Such certifications would be issued only if the Debarring Official has the same type of documentation which would be required to obtain reinstatement (under the new § 32.321) after a post-conviction CAA or CWA facility ineligibility.

A new § 32.321 is proposed which prescribes the procedures for seeking reinstatement of facility eligibility.

Finally, §§ 32.330 and 32.425 are proposed to be removed from this rule as part of EPA's effort to eliminate unnecessary regulatory provisions. These sections were part of EPA's original 1982 assistance debarment regulation and were retained when EPA published its version of the OMB Nonprocurement Governmentwide Debarment and Suspension Rule (Common Rule) in 1988. Although the Common Rule does not prescribe a ''reconsideration'' procedure, § 32.320(c) authorizes a debarred respondent to request, at any time, that the debarment decision be reversed or that the period or scope of a debarment be reduced. Even without this provision, EPA believes that the debarring and suspending official has inherent authority to reconsider a suspension or debarment decision.

The proposed removal of the §§ 32.330 and 32.425 reconsideration provisions will not affect a respondent's opportunity to file an appeal under §§ 32.335 and 32.430. Although also not prescribed in the OMB Common Rule, the seldom used Part 32 appeal provisions are being retained because they provide an inexpensive procedure for challenging EPA suspension and debarment determinations.

A record has been established for this rulemaking under docket number ''[FRL–5219–6]'' (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 217 of the EPA Fairchild Building located at 499 South Capitol Street, Washington, DC.

Electronic comments can be sent directly to EPA at:
meunier.robert@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

## Rulemaking Analysis

*B. Executive Order 12866*

This rulemaking has been determined not to be significant under EO 12866. However, it has been sent to the Office of Management and Budget for review for consistency with the OMB Common Rule.

*C. Regulatory Flexibility Act*

The EPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 *et seq.*

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duties on any of these governmental entities or the private sector. This proposed rule does not change the current statutory and regulatory duties that arise from conditions of federal assistance which, as defined by UMRA, do not constitute a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule would eliminate the separate procedures in 40 CFR Part 15 for administering the Clean Air Act and Clean Water Act ineligibility provisions, and incorporate simplified ineligibility procedures in EPA's existing nonprocurement suspension and debarment rules (40 CFR Part 32). None of these amended procedures would impose significant or unique regulatory requirements on small governments. Therefore, the proposed rule is not subject to section 203 of the UMRA.

## List of Subjects in 40 CFR Parts 15 and 32

Administrative practice and procedure, Debarment and suspension, Ineligibility.

Dated: August 21, 1995.

**Alvin Peschowitz,**

*Acting Assistant Administrator, Office of Administration and Resources Management.*

For the reasons set out in the preamble, 40 CFR Parts 15 and 32 are proposed to be amended as follows:

1. Part 15 is removed.

2. The title of Part 32 is revised to read as follows:

## PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS); CLEAN AIR ACT AND CLEAN WATER ACT INELIGIBILITY OF FACILITIES IN PERFORMANCE OF FEDERAL CONTRACTS, GRANTS AND LOANS

3. The authorities citation for part 32 is revised to read as follows:

**Authority:** EO 12549; 41 U.S.C. 701 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*; EO 12689; EO 11738; Pub. L. 103–355 § 2455.

4. Section 32.100 is amended by adding new paragraph (e) as follows:

### § 32.100 Purpose.

* * * * *

(e) Facilities ineligible to provide goods, materials, or services under Federal contracts, loans or assistance, pursuant to Section 306 of the Clean Air Act (CAA) or Section 508 of the Clean Water Act (CWA) are excluded in accordance with the terms of those statutes. Reinstatement of a CAA or CWA ineligibile facility may be requested in accordance with the procedures at § 32.321.

5. Section 32.105 is amended by adding in alphabetical order the following definitions.

### § 32.105 Definitions.

* * * * *

*CAA or CWA ineligibility.* The status of a facility which, as provided in section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), is ineligible to be used in the performance of a Federal contract, subcontract, loan, assistance award or covered transaction. Such ineligibility commences upon conviction of a facility owner, lessee, or supervisor for a violation of section 113 of the CAA or section 309(c) of the CWA, which violation occurred at the facility. The ineligibility of the facility continues until such time as the EPA Debarring Official certifies that the condition giving rise to the CAA or CWA criminal conviction has been corrected.

*Facility*. Any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations at which, or from which, a Federal contract, subcontract, loan, assistance award or covered transaction is to be performed. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed the facility unless otherwise limited by EPA.

* * * * *

6. Section 32.110 is amended by adding a new paragraph (d) to read as follows:

**§ 32.110 Coverage.**

* * * * *

(d) Except as provided in § 32.215 of this Part, Federal agencies shall not use a CAA or CWA ineligible facility in the performance of any Federal contract, subcontract, loan, assistance award or covered transaction.

* * * * *

7. Section 32.115 is amended by revising paragraph (d) to read as follows:

**§ 32.115 Policy.**

* * * * *

(d) It is EPA policy to exercise its authority to reinstate CAA or CWA ineligible facilities in a manner which is consistent with the policies in paragraphs (a) and (b) of this section.

* * * * *

8. Section 32.215 is amended by revising paragraph (a) to read as follows:

**§ 32.215 Exception provision.**

* * * * *

(a) Any agency head, or authorized designee, may except any Federal contract, subcontract, loan, assistance award or covered transaction, individually or as a class, in whole or in part, from the prohibitions otherwise applicable by reason of a CAA or CWA ineligibility. The agency head granting the exception shall notify the EPA Debarring Official of the exception as soon, before or after granting the exception, as may be practicable. The justification for such an exception, or any renewal thereof, shall fully describe the purpose of the contract or covered transaction, and show why the paramount interest of the United States requires the exception.

9. Section 32.215 is further amended by adding a new paragraph (b) to read as follows:

**§ 32.215 Exception provision.**

* * * * *

(b) The EPA Debarring Official is the official authorized to grant exceptions under this section for EPA.

10. Section 32.315 is amended by adding a new paragraph (c) to read as follows:

**§ 32.315 Settlement and voluntary exclusion.**

* * * * *

(c) The EPA Debarring Official may consider matters regarding present responsibility, as well as any other matter regarding the conditions giving rise to alleged CAA or CWA violations in anticipation of entry of a plea, judgment or conviction. If, at any time, it is in the interest of the United States to conclude such matters pursuant to a comprehensive settlement agreement, the EPA Debarring Official may conclude the debarment and ineligibility matters as part of any such settlement, so long as he or she certifies that the condition giving rise to the CAA or CWA violation has been corrected.

11. Section 32.321 is added to read as follows:

**§ 32.321 Reinstatement of facility eligibility.**

(a) A written petition to reinstate the eligibility of a CAA or CWA ineligible facility may be submitted to the EPA Debarring Official. The petitioner bears the burden of providing sufficient information and documentation to establish, by a preponderance of the evidence, that the condition giving rise to the CAA or CWA conviction has been corrected. If the material facts set forth in the petition are disputed, and the Debarring Official denies the petition, the petitioner shall be afforded the opportunity to have additional proceedings as provided in § 32.314(b).

(b) A decision by the EPA Debarring Official denying a petition for reinstatement may be appealed under § 32.335.

**§ 32.330 [Removed]**

12. Section 32.330 is removed.

**§ 32.425 [Removed]**

13. Section 32.425 is removed.

[FR Doc. 95–22088 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[CA 137–1–7051b; FRL–5262–4]**

## Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to act on revisions to the California State Implementation Plan (SIP) which concern two negative declarations from the Mojave Desert Air Quality Management District for two volatile organic compound (VOC) source categories: Asphalt Air Blowing and Vacuum Producing Devices or Systems. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is acting on the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by October 11, 1995.

**ADDRESSES:** Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, Rulemaking Section, A–5–3, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

**SUPPLEMENTARY INFORMATION:** This document concerns negative declarations for two VOC source categories from the Mojave Desert Air Quality Management District: (1) Asphalt Air Blowing submitted to EPA on December 20, 1994 and (2) Vacuum Producing Devices or Systems submitted to EPA on December 29, 1994 by the California Air Resources Board.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: July 10, 1995.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 95–22147 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–W

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## 40 CFR Part 52

**[CT–18–1–6482b; A–1–FRL–5271–4]**

## Approval and Promulgation of Air Quality Implementation Plans—Connecticut; PM10 Attainment Plan and Contingency Measures for New Haven

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing full approval of a State Implementation Plan (SIP) revision submitted by the State of Connecticut to satisfy certain federal requirements for the New Haven initial PM10 nonattainment area. The purpose of this action is to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). EPA also proposes full approval of reasonable available control measures (RACM) and contingency measures for the New Haven initial PM10 moderate nonattainment area as established in this SIP revision, since Connecticut has demonstrated implementation of RACM will attain and maintain the PM10 NAAQS. Additionally, EPA proposes approval of Connecticut's adoption of the PM10 NAAQS and emergency episode regulation. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA does receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

**DATES:** Comments must be received on or before October 11, 1995.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Bldg (AAA), Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, (617) 565–4982.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

**Authority:** 42 USC 7401–7671q.

Dated: May 26, 1995.

**John P. DeVillars,**

*Regional Administrator, EPA–New England.*

[FR Doc. 95–22131 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[DE22–1–7160b, DC19–1–7159b, MD36–1–7161b, PA48–1–7162b, VA42–1–7163b; FRL–5291–9]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia; Revisions to the State Implementation Plans (SIPs) Addressing Ozone Monitoring

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve revisions to the following states State Implementation Plans (SIPs) for ozone: Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia. This action is based upon revision requests submitted by these states to satisfy the requirements of the Clean Air Act, as amended November 15, 1990 and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulation required states to provide for the establishment and maintenance of an enhanced ambient air quality network in the form of PAMS by November 12, 1993.

In the Final Rules section of this **Federal Register**, EPA is approving these states' SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 11, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; Pennsylvania Department of Environmental Protection, P.O. Box 8468, 400 Market Street, Harrisburg,

Pennsylvania 17105; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

**FOR FURTHER INFORMATION CONTACT:** Catherine L. Magliocchetti, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–6863.

**SUPPLEMENTARY INFORMATION:** For further information regarding the PAMS rulemaking for Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia, see the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: August 18, 1995.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

[FR Doc. 95–22159 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[KY–069–3–6904b; FRL–5277–3]**

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet approving the redesignation to attainment and maintenance plan of the Lexington area because it meets the maintenance plan and redesignation requirements. EPA also proposes to approve the 1990 baseline emissions inventory of the area. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by October 11, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

**FOR FURTHER INFORMATION CONTACT:** Scott Southwick of the EPA Region 4 Air Programs Branch at (404) 347–3555 (extension 4207) and at the above address. Reference file Ky–069–3–6904.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 8, 1995.

**R.F. McGhee,**

*Acting Regional Administrator.*

[FR Doc. 95–22157 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[TN–126–6580b; FRL–5282–9]**

## Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Permit Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the purpose of establishing revisions to the permit requirements for major sources of air pollution in the Nashville/Davidson County area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by October 11, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Karen C. Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4197. Reference file TN–126–1–6580a.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 9, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95–22146 Filed 9–8–95; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 55

**[FRI–5292–4]**

## Outer Continental Shelf Air Regulations Consistency Update for California

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

**ACTION:** Notice of proposed rulemaking—consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations being updated pertain to the operating permit requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) is the designated COA. The OCS requirements for the above District, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Comments on the proposed update must be received on or before October 11, 1995.

**ADDRESSES:** Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section X, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section X). This docket is available for public inspection and copying Monday—Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section X, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–6102), Attn: Air Docket No. A–93–16 Section X, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 4, 1992, EPA promulgated 40 CFR Part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of Part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in Part 55. This NPR is being promulgated in response to the submittal of Part 70 operating permit rules by a local air pollution control agency.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into Part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into Part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into Part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

### EPA Evaluation and Proposed Action

On July 10, 1995 (60 FR 35538), EPA proposed interim approval of the Operating Permits Program submitted by the Santa Barbara County APCD. EPA is now proposing to update 40 CFR Part 55 by incorporating the requirements of this program, in response to Santa Barbara County APCD's request and to maintain consistency with onshore requirements. These proposed requirements will apply to the extent that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, that they are applicable to OCS sources, and that they do not solely regulate pollutants or precursors to pollutants for which there is no federal or state ambient air quality standard. These proposed Santa Barbara County APCD operating permit requirements applicable to OCS sources will not be finalized in Part 55 until EPA takes final action granting full or interim approval to the Santa Barbara County APCD Operating Permits Program.

The following Santa Barbara County APCD Part 70 permit requirement were submitted for inclusion in Part 55:

Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 11/09/93)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)

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[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

## Administrative Requirements

*A. Regulatory Flexibility Act*

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore Part 70 permit requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the OCS rule. Because this action does not create any new requirements, it does not have a significant impact on a substantial number of small entities.

*B. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

*C. Unfunded Mandates*

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

EPA has determined that the final action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to the State, local, or tribal governments, or to the private sector, result from the action.

## List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: August 25, 1995.

**Felicia Marcus,**

*Regional Administrator.*

Title 40 of the Code of Federal Regulations, Part 55, is proposed to be amended as follows:

## PART 55—[AMENDED]

1. The authority citation for Part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.**

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

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4. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b) (6) under the heading California to read as follows:

## Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

(California) * * *

* * * * *

(b) Local requirements.

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(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration–Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate–Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 12/14/93)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen ($NO_x$ from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)
Rule 359 Flares and Thermal Oxidizers (Adopted 6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 11/09/93)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

[FR Doc. 95–22087 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 81

**[CT–22–1–7078b; A–1–FRL–5271–6]**

## Clean Air Act Promulgation of Reclassification of PM10 Nonattainment Areas—Connecticut; Approval of 1–Year Extension of Attainment Date for New Haven

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing full approval of Connecticut's request for a 1-year extension of the attainment date for the New Haven PM10 nonattainment area. This action is based on monitored air quality data for the national ambient air quality standard for PM10 during the years 1992–94. This action is being taken under the Clean Air Act. In the Final Rules Section of this **Federal Register**, EPA is approving the Connecticut's extension request as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA does receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

**DATES:** Comments must be received on or before October 11, 1995.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Bldg (AAA), Boston, MA 02203–2211. Copies of Connecticut's submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, (617) 565–4982.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

**Authority:** 42 USC 7401–7671q.

Dated: July 10, 1995.

**John P. DeVillars,**

*Regional Administrator, EPA-New England.*

[FR Doc. 95–22133 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 677

**[Docket No. 950822211–5211–01; I.D. 080395A]**

**RIN 0648–AD80**

## North Pacific Fisheries Research Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; public hearing by teleconference.

**SUMMARY:** NMFS issues a proposed rule to implement Amendment 1 to the North Pacific Fisheries Research Plan (Research Plan). Regulations implementing this amendment would delay full implementation of the Research Plan until 1997 and establish 1996 observer coverage requirements for the Research Plan fisheries. This delay is necessary to provide the North Pacific Fishery Management Council (Council) additional time to address certain issues presented by implementation of the Research Plan. To remain consistent with the Council's intent, observer coverage requirements in regulations that implement Amendment 35 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area are proposed to be extended through 1996.

**DATES:** Comments on this proposed rule must be received by November 6, 1995. A public hearing on the proposed rule will be held by teleconference on Monday, September 18, 1995, at 1 p.m., Alaska local time.

**ADDRESSES:** Comments on this proposed rule may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori J. Gravel. Copies of the Observer Plan may also be obtained from this address.

Copies of the Research Plan as revised by proposed Amendment 1, the environmental assessment/regulatory impact review prepared for the Research Plan, and the final report ''Establishing the Fee Percentage and Standard Exvessel Prices for 1995'' may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

Locations where interested persons may participate in the September 18, 1995, public hearing by teleconference are as follows:

1. Anchorage—North Pacific Fishery Management Council, 600 West 4th Avenue, Anchorage, AK (907–271–2809);
2. Juneau—National Marine Fisheries Service, Alaska Region, 706 West 9th Street, Juneau, AK (907–271–7228);
3. Seattle—Alaska Fisheries Science Center, 7600 Sand Point Way Northeast, Building 4, Room 7600, Seattle, WA (206–526–4197);
4. Newport—Oregon Department of Fish and Wildlife, 2040 Southeast Marine Science Drive, Newport, OR (503–867–0300).

**FOR FURTHER INFORMATION CONTACT:** Susan Salveson, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). A regulatory amendment was published in the **Federal Register** on January 9, 1995 (60 FR 2344), that clarified 1995 observer coverage requirements and revised the definition of certain terms set out under § 677.2. Two additional rules have been published in the **Federal Register** that make other minor substantive changes to the regulations implementing the Research Plan. A final rule published on July 5, 1995 (60 FR 34904), and required vessels and shoreside processors to facilitate transmission of observer data. Finally, a proposed rule published on August 16, 1995 (60 FR 42470) revised 1995 observer coverage requirements for crab catcher vessels and exempted certain crab catcher vessels required to obtain observer coverage from paying 1995 Research Plan fees.

The Research Plan adopted by the Council at its December 1993 meeting established a two-phase implementation strategy for the Research Plan. The first phase is occurring in 1995 and serves to collect start-up funding for full implementation of the Research Plan. During 1995, NMFS is assessing and collecting Research Plan fees. Participants in the Research Plan fisheries are continuing independently to obtain required observer coverage

from NMFS-certified observer contractors. ''Double payments'' for observer services and the Research Plan fee liability are avoided in 1995 through either catcher vessel exemptions from the fee liability or processor credits up to each processor's Research Plan fee liability. Under the Research Plan adopted by the Council and NMFS, the Research Plan would be fully implemented starting in 1996, and observer coverage would be provided to participants in Research Plan fisheries through contractual arrangements between NMFS and companies awarded contracts to provide observer services for the Research Plan fisheries.

The Council, at its April 1995 meeting, raised some concerns about proceeding with the Research Plan and requested NMFS to delay the solicitation process for awarding contracts to provide observers under the Research Plan during 1996. The Council also requested NMFS to initiate an amendment to the Research Plan that would delay full implementation of the Research Plan for at least 6 months.

NMFS informed the Council that the design and implementation of the Research Plan and its specification process are tied to an annual cycle. Mid-year implementation of the Research Plan would create significant administrative and operational problems. Therefore, NMFS suggested a 1-year delay of the full implementation of the Research Plan, rather than the 6-month delay requested by the Council. During a May 16, 1995, teleconference, the Council reaffirmed its desire to delay the Research Plan and agreed to extend the delay for a 1-year period. The Council sought a delay in full implementation of the Research Plan in order to provide additional time to reconsider certain elements of the Research Plan that were previously adopted by the Council. The Council's concerns are as follows: Minimum levels of observer insurance coverage, minimum number of contractors that will provide observer coverage, duration of contracts, notification requirements for obtaining observer coverage, allowances for emergency replacement of observers as well as transfer of observers among vessels, adequate monitoring and control of industry compliance with observer coverage requirements, and ability of supplemental or voluntary observer programs to meet increased compliance monitoring requirements of future management programs under consideration by the Council.

The Council also expressed its intent to continue the fee collection program implemented for 1995 for the remainder of the year, so that adequate start-up funds may be collected for full implementation of the Research Plan in 1997. This means that NMFS will continue to assess fees through early 1996 for fish harvested and retained in the Research Plan fisheries during the last few months of 1995. Collected funds would continue to be held in an interest-bearing account and would be used to award contracts to provide observers under the Research Plan starting in 1997.

The current Research Plan allows a delay in the full implementation of the plan beyond 1995, only if insufficient funds exist to support contract awards for the first half of 1996. NMFS believes that the 1995 fee collection program will provide sufficient funds to support contract awards to initiate full implementation of the Research Plan.

Through mid-July 1995, NMFS had collected $4.2 million in Research Plan fees. The final report ''Establishing the Fee Percentage and Standard Exvessel Prices for 1995'' (see **ADDRESSES**) estimates that $4.8 million will be needed for start-up funding to support contractual arrangements for observer coverage during the first 6 months of full implementation of the Research Plan. NMFS anticipates that this amount will be collected in 1995 and that full implementation of the Research Plan can be pursued for 1997.

Therefore, the Council's request to delay full implementation of the Research Plan requires an amendment to the Research Plan. At its June 1995 meeting, the Council requested that the date for full implementation of the Research Plan be established by regulations rather than by the Research Plan. The intent of this request was to allow for a revision of this date through a regulatory amendment, rather than an amendment to the Research Plan.

Given that adequate start-up funds will be collected during 1995, no reason exists to continue the fee collection program during 1996. As a result, Research Plan fees will not be assessed for fish caught in 1996. The annual Research Plan specification process becomes unnecessary for 1996, because no reason exists to establish a 1996 fee percentage or standard exvessel prices on which to base fee assessments. The Council intends that 1996 observer coverage levels remain unchanged from 1995 levels. These observer coverage requirements for the groundfish and crab fisheries are set out at § 677.10(a). As in 1995, participants in the groundfish and crab Research Plan fisheries would be responsible for making their own arrangements and paying for required observer coverage. As a result, specifications for observer embarkment/disembarkment ports for observers also are unnecessary for 1996.

The Council's intent to maintain 1995 observer coverage levels through 1996 would also apply to mothership processor vessel and shoreside processor observer coverage requirements set out in regulations implementing Amendment 35 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Final regulations implementing Amendment 35, published on July 5, 1995 (60 FR 34904) and codified at 50 CFR 675.25(b), are effective through December 31, 1995. In keeping with the Council's intent to maintain 1995 observer coverage levels in 1996, NMFS proposes to extend the Amendment 35 requirements through 1996 by including them under regulations implementing 1996 Research Plan observer coverage requirements at § 677.10(a)(1). NMFS also proposes to clarify that the additional observer coverage requirements implemented under Amendment 35 are effective only through October 15 of the second pollock season defined under 50 CFR 675.23(e).

NMFS notes that regulations at § 677.10(g) set out vessel safety requirements applicable in 1996 and beyond. No changes to these requirements are proposed, however, the regulatory text would be revised to clarify that these requirements apply to vessels required to carry observers in 1996 under § 677.10(a).

NMFS further notes that the following sections of the Observer Plan still would be in effect until full implementation of the Research Plan in 1997: (1) Standards of observer conduct; and (2) Description, specifications, and work statement for certified domestic observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation. Copies of the Observer Plan dated May 1994 are available from NMFS (see **ADDRESSES**).

Public comments on the proposed amendment to the Research Plan and its implementing regulations are invited for 60 days. During this comment period, NMFS will conduct public hearings, as required by section 313(c)(2) of the Magnuson Act, in Alaska, Oregon, and Washington to receive public comments on the proposed regulations (see **DATES** and **ADDRESSES** for dates and locations). NMFS will consider the public comments received in preparing the final rule implementing the amendment.

## Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. An effect of the proposed rule would be to eliminate the 1996 fee assessment program authorized under the Research Plan.

The vessel owners who will benefit from this delay are those owners whose vessels fall into the following categories: about 4,000 halibut vessels, 1,400 groundfish vessels less than 60 ft length overall (LOA), and approximately 270 crab catcher vessels; these owners will be relieved from having to pay the Research Plan fee and will not be required to have observer coverage. In addition, owners of all processors will benefit because they will pay the direct observer cost which is less than the Research Plan fee. Groundfish catcher vessels over 60 ft LOA will pay direct observer costs; these costs will equal or exceed the Research Plan fee. In general the direct observer costs are about 1.1 percent of the exvessel value of landings. About 30 crab catcher vessels are required to carry observers. Owners of most of these vessels will pay direct observer costs that may be 2 to 4 times higher than what they would pay in terms of Research Plan fees.

Thus, while the proposed rule would affect a substantial number of small entities during 1996, the effect would not be economically significant. As a result, a regulatory flexibility analysis was not prepared. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

## List of Subjects in 50 CFR Part 677

Fisheries, Reporting and recordkeeping requirements.

Dated: September 5, 1995

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 677 is proposed to be amended as follows:

## PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

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

2. In § 677.6, paragraph (b)(2) is redesignated as paragraph (b)(3), a new paragraph (b)(2) is added, and the heading to newly redesignated paragraph (b)(3) is revised to read as follows:

### § 677.6 Research Plan fee.

* * * * *

(b) * * *

(2) *Fee assessments during 1996.* Processors of Research Plan fisheries will not be assessed fees based on catch from Research Plan fisheries that is retained during the 1996 calendar year.

(3) *Fee assessments applicable after December 31, 1996.* * * *

* * * * *

3. In § 677.10, the headings for paragraphs (a) and (b) and the introductory text to paragraph (g) are revised, paragraphs (a)(1)(i)(C) through (a)(1)(i)(F) are redesignated as paragraphs (a)(1)(i)(D) through (a)(1)(i)(G), respectively and paragraphs (a)(1)(i)(C) and (a)(2)(iii) are added to read as follows:

### § 677.10 General requirements.

(a) *Observer requirements applicable through December 31, 1996.* (1) * * *

(i) * * *

(C) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15 under § 675.23(e) of this chapter, is required to have a second NMFS-certified observer aboard, in addition to the observer required under paragraphs (a)(1)(i)(A) and (B) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or October 15, 1996, whichever occurs first.

* * * * *

(2) * * *

(iii) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15, under § 675.23(e) of this chapter, is required to have a NMFS-certified observer, in addition to the observer required under paragraphs (a)(2)(i) and (ii) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or October 15, 1996, whichever occurs first.

* * * * *

(b) *Observer requirements applicable after December 31, 1996.* * * *

* * * * *

(g) *Vessel safety requirements applicable after December 31, 1995.* Any vessel that is required to carry observers under paragraph (a) or (b)(1) of this section must have onboard either:

* * * * *

4. In § 677.11, paragraph (a)(4) is revised to read as follows:

### § 677.11 Annual Research Plan specifications.

(a) * * *

(4) *Observer coverage.* For the period January 1, 1995, through December 31, 1996, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1996, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

* * * * *

[FR Doc. 95–22510 Filed 9–6–95; 3:17 pm]

BILLING CODE 3510–22–F

# Notices

Federal Register

Vol. 60, No. 175

Monday, September 11, 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.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Intergovernmental Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Intergovernmental Advisory Committee (IAC) will meet on September 28, 1995, at the Veterans of Foreign Wars Post 5689, 37410 Main Street, Burney, CA 96013. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on September 28 and continue until 4:30 p.m. the same day. The main agenda item will be discussions on policy implications of implementation and effectiveness monitoring. As time permits, other items on the agenda will include an update on Section II of the federal watershed analysis guide, a presentation from the California Coast Provincial Advisory Committee, and other topics relative to the Northwest Forest Plan. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:**

Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: September 5, 1995.

**Donald R. Knowles,**

*Designated Federal Official.*

[FR Doc. 95–22455 Filed 9–8–95; 8:45 am]

BILLING CODE 3410–11–M

### Natural Resources Conservation Service

### Honey Creek Watershed, Vigo and Clay Counties, IN

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR 650); The Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Honey Creek Watershed, Vigo and Clay Counties, Indiana.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service, 6013 Lakeside Boulevard, Indianapolis, Indiana, 46278, telephone (317) 290–3200.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is a plan for flood control. The planned works of improvement covered by this Finding of No Significant Impact (FONSI) is the relocation of approximately 0.7 mile of Jordan Ditch.

The Notice of a FONSI has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.** (This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

**Robert L. Eddleman,**

*State Conservationist.*

[FR Doc. 95–22404 Filed 9–8–95; 8:45 am]

BILLING CODE 3410–16–M

### Muddy Fork of Silver Creek Watershed, Clark, Floyd and Washington Counties, IN

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650), the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Muddy Fork of Silver Creek Watershed, Clark, Floyd, and Washington Counties, Indiana.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278, telephone (317) 290–3200.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are a plan for flood control, watershed protection and municipal and industrial water supply. The planned works of improvement covered by this Finding of No Significant Impact (FONSI) is approximately 12.0 miles of debris removal, selective tree removal, and streambank stabilization.

The Notice of a FONSI has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

**Robert L. Eddleman,**

*State Conservationist.*

[FR Doc. 95–22405 Filed 9–8–95; 8:45 am]

**BILLING CODE 3410–16–M**

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration (BXA).

*Title:* Exceptions to the Import Certification and Delivery Verification Procedures.

*Agency Form Number:* None.

*OMB Approval Number:* 0694-0001.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 16 hours.

*Number of Respondents:* 31.

*Avg Hours Per Response:* Approximately 30 minutes.

*Needs and Uses:* The U.S. and participating countries have agreed to establish Import Certificate and Delivery Verification requirements to help control the disposition of strategically important commodities. This reporting requirement allows exporters to request an exception to the import certificate or delivery verification procedures. The information provided is used by BXA to determine if an exception request is warranted.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Title: Quarterly Report on Exports of Parts to Service Equipment Shipped Against a Validated Export License.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0003.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 5 hours.

*Number of Respondents:* 2 respondents filing quarterly reports.

*Avg Hours Per Response:* 30 minutes for the reporting requirement and 1 minute for recordkeeping.

*Needs and Uses:* The Export Administration regulations permit firms to apply for export licenses or reexport authorizations to ship parts needed to service equipment previously exported under an export license. Once BXA grants authority to ship replacement parts, the exporter is required to submit a quarterly report. These reports are reviewed to make sure that there are no excessive shipments of spare parts.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* Quarterly.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Foreign Availability Procedures and Criteria.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0004.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 2,550 hours.

*Number of Respondents:* 10.

*Avg Hours Per Response:* Ranges between 105 and 300 hours.

*Needs and Uses:* BXA restricts the export of goods and technology that would make a significant contribution to the military potential of other countries, unless it can be determined that foreign availability of the same goods and technology makes export controls ineffective. The information provided is used in determining whether to conduct a foreign availability assessment.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Report of Requests for Restrictive Trade Practice or Boycott.

*Agency Form Numbers:* BXA–621P, 6051P, 6051P–a.

*OMB Approval Number:* 0694–0012.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 14,776 reporting and recordkeeping hours.

*Number of Respondents:* 1,187.

*Avg Hours Per Response:* Varies between 1 and 30 hours depending on the requirement and one minute for each record maintained.

*Needs and Uses:* The Export Administration Regulations require U.S. persons to report any requests that they have received to take any action to comply with, further, or support an unsanctioned foreign boycott. The information provided by firms is used by BXA to monitor requests for participation in foreign boycotts, analyze changing trends for purposes of deciding U.S. policy of discouraging participation in restrictive trade practices, and to initiate boycott investigations. Without this data, BXA would not have an adequate factual basis for implementing the U.S. boycott program.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Statement by Ultimate Consignee and Purchaser.

*Agency Form Number:* BXA 629P.

*OMB Approval Number:* 0694–0021.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 4,289 hours.

*Number of Respondents:* 4,289.

*Avg Hours Per Response:* 1 hour.

*Needs and Uses:* Most export license application requests must be accompanied by supporting documents designed to elicit information concerning the intended end–use and end–user of the goods abroad. In order to verify what the U.S. exporter has told BXA about the shipment, the ultimate consignee and purchaser are also required to provide information on the use of the item. The information is used in making licensing decisions.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Quarterly Report of the Loan or Sale of Aircraft Equipment Parts,

Accessories and Components by Airlines.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0035.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 819 hours.

*Number of Respondents:* 190.

*Avg Hours Per Response:* Annual recordkeeping time per respondent is 4.3 hours and 2 hours for those companies that need to file quarterly reports.

*Needs and Uses:* The Export Administration regulations allow airlines operating abroad to lend or sell U.S. airplane parts to another airline without written BXA authority. Airlines participating must maintain records of these transactions. For those countries in which inspections are now allowed, airlines must submit quarterly reports on equipment transfers. If this procedure were not in place, individual validated licenses would be required.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* Quarterly, recordkeeping.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Report on Unscheduled Unloading and or Return of Cargo.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0040.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 2 hours.

*Number of Respondents:* 2.

*Avg Hours Per Response:* 1 hour.

*Needs and Uses:* On rare occasions, a carrier may find itself in an emergency situation in which controlled goods or technology are unloaded at a destination other than shown on the Shipper's Export Declaration. In such instances, the carrier must notify BXA. Also, a carrier who believes that a shipment may be in violation must notify BXA. This data collection supports BXA's mission of controlling items for national security or foreign policy reasons.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Procedure for Voluntary Self–Disclosure of Violations of the Export Administration Act.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0058.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 670 hours.

*Number of Respondents:* 67.

*Avg Hours Per Response:* 10 hours.

*Needs and Uses:* BXA has established procedures for voluntary self–disclosure of export violations. The information provided is used by Export Enforcement to investigate and assess the nature and gravity of the violation. By having such a procedure, it allows BXA to administer the regulations more effectively.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Telecommunications.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0078.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 92 hours.

*Number of Respondents:* 15.

*Avg Hours Per Response:* Varies per the requirement from 15 minutes to 2 hours.

*Needs and Uses:* For the shipment of telecommunications equipment to proscribed countries, exporters must provide end use assurances and provide detailed information on the proposed use. The information is used for licensing decisions and for enforcement purposes once a license is issued.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Import Certificates and End–User Certificates.

*Agency Form Number:* None.

*OMB Approval Number:* None.

*Type of Request:* Existing collection in use without an OMB control number.

*Burden:* 1,144 hours.

*Number of Respondents:* 4,576.

*Avg Hours Per Response:* 15 minutes.

*Needs and Uses:* A number of countries are participating in a program to control the trade of strategic commodities through the Import Certificate–Delivery Verification procedure. This collection of information is the certification of the overseas importer to the U.S. Government that they will not reexport commodities except in accordance with U.S. export regulations.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* Bureau of Export Administration (BXA).

*Title:* Procedures for Acceptance or Rejection of Rated Order.

*Agency Form Number:* None.

*OMB Approval Number:* None.

*Type of Request:* Existing collection in use without an OMB control number.

*Burden:* 31,500 hours.

*Number of Respondents:* 25,000 with multiple responses.

*Avg Hours Per Response:* Approximately 15 minutes.

*Needs and Uses:* This requirement is needed for the administration of the Defense Production Act. The purpose of the Act is to ensure the timely delivery of goods and services to meet current national defense and emergency preparedness requirements. To help ensure the timely delivery, suppliers must accept or reject defense rated orders and must do so by writing or by electronic means.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Request for Restoration Ideas – New Bedford Harbor.

*Agency Form Number:* None assigned.

*OMB Approval Number:* None.

*Type of Request:* New Collection.

*Burden:* 100 hours.

*Number of Respondents:* 50.

*Avg Hours Per Response:* 1 hours –– 2 responses per respondent.

*Needs and Uses:* Under the Comprehensive Environmental Response, Compensation and Liability Act, state and federal natural resource trustees, are responsible for the restoration of natural resources injured by releases of hazardous substances. The collection provides an opportunity for the public to submit ideas for restoration of resources that were injured by the release of contaminated materials in the New Bedford environment.

*Affected Public:* Individuals, businesses or other for–profit organizations, not–for–profit institutions, state, local or tribal government.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Northeast Region Dealer Purchase Reports.

*Agency Form Numbers:* NOAA 88–30 and 88–142.

*OMB Approval Number:* 0648–0229.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 2,801 hours.

*Number of Respondents:* 1,120 with multiple responses.

*Avg Hours Per Response:* Ranges between 2 and 30 minutes depending on the requirement.

*Needs and Uses:* Fishery statistics are collected by NMFS so that the Nation's fishery resources can be managed effectively. Dealer reporting is needed to obtain fishery dependent data on the landings and purchase of fish and shellfish to monitor, evaluate, and enforce fishery regulations, collect basic fishery statistics and to collect certain effort information for economic and biological assessment of the stocks.

*Affected Public:* Businesses or other for–profit organizations.

*Frequency:* On occasion, weekly.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Cooperative Game Fish Tagging Report.

*Agency Form Number:* NOAA 88–162.

*OMB Approval Number:* 0648–0247.

*Type of Collection:* Extension of a currently approved collection.

*Burden:* 450 hours.

*Number of Respondents:* 1,500.

*Avg Hours Per Response:* 2 minutes.

*Needs and Uses:* Data are needed to determine migratory patterns, distance traveled, stock boundaries, age, and growth patterns of billfish and other recreational and commercially–valued species. Anglers volunteer to tag and release fish, submitting a tagging card with information of the fish released and the location of release. This information is used with information on returned tags to perform analyses necessary for the development of fishery management plans.

*Affected Public:* Individuals.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 30, 1995

**Gerald Tache,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 95–22434 FIled 9–8–95; 8:45 am]

BILLING CODE 3510–CW–F

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## Foreign-Trade Zones Board

**[Docket 49–95]**

## Proposed Foreign-Trade Zone—St. Lucie County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Central Florida Foreign-Trade Zone, Inc. (a not-for-profit corporation), to establish a general-purpose foreign-trade zone at sites in St. Lucie County, Florida, within the limits of the Fort Pierce Customs Station, which, with Customs concurrence, is considered the functional equivalent of a Customs port of entry for purposes of foreign-trade zone status. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 31, 1995. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated.

The proposed new zone would consist of 3 sites (1,588 acres) in St. Lucie County: *Site 1* (1,078 acres)—St. Lucie County International Airport; *Site 2* (102 acres)—King's Highway Industrial Park, intersection of King's Highway and Commercial Circle, Fort Pierce; and, *Site 3* (408 acres)—St. Lucie West Commerce Park, 590 N.W. Peacock Blvd., Port St. Lucie.

The application contains evidence of the need for zone services in the St. Lucie County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as machine tools, electronic components, medical equipment, food processing/manufacturing, aircraft manufacture, and boat building/marine industry. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 29, 1995, at 2:30 p.m., at the Fort Pierce Community Center, 600 N. Indian River Drive, Fort Pierce, Florida 34950.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication].

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Fort Pierce Station,
U.S. Customs Service,
2990 Aviation Way,
Fort Pierce, Florida 34946
Office of the Executive Secretary,
Foreign-Trade Zones Board, Room 3716,
U.S. Department of Commerce,
14th & Pennsylvania Avenue, NW.,
Washington, DC 20230

Dated: September 5, 1995.

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 95–22503 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 766]**

## Grant of Authority for Expansion Foreign-Trade Subzone 9B Kerr Pacific Corporation (Animal Feeds) Honolulu, Hawaii

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of Foreign-Trade Zone 9 (Honolulu, Hawaii), requesting authority to expand the scope of activity conducted under zone procedures at FTZ Subzone 9B, at the Kerr Pacific Corporation/HFM Division plant, (formerly Hawaiian Flour Mills, Inc.) in Honolulu, Hawaii, to include the production of animal feed solely for Hawaiian and export markets, and requesting authority to expand the subzone boundary, was filed by the Board on June 8, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 24–94, 59 FR 35095, 7/8/94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the expansion of the subzone boundaries and the scope of activity at Subzone 9B at the plant site of Kerr Pacific Corporation/HFM Division, in Honolulu, Hawaii, as described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 1st day of September 1995.

**Paul L. Joffe,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 95–22505 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 767]**

## Grant of Authority for Subzone Status; Rotorex Company, Inc. (Rotary Compressors), Walkersville, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Maryland Department of Transportation, grantee of Foreign-Trade Zone 73, for authority to establish special-purpose subzone status at the rotary compressor manufacturing plant of the Rotorex Company, Inc., in Walkersville, Maryland, was filed by the Board on September 6, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 30–94, 59 FR 48850, 9–23–94); and

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 73A) at the Rotorex Company, Inc., plant in Walkersville, Maryland, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 1st day of September 1995.

**Paul L. Joffe,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 95–22506 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 764]**

## Expansion of Foreign-Trade Zone 122, Corpus Christi, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone No. 122, requesting authority to expand its general-purpose zone in the Corpus Christi, Texas, area, within the Corpus Christi Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on August 25, 1994 (Docket 29–94, 59 FR 48850, 9/23/94);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including § 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 1st day of September 1995.

**Paul L. Joffe,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 95–22504 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration

**[A–580–812]**

## Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/International Trade Administration/Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests from three respondents, one U.S. producer, and several interested parties, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States for the period of October 29, 1992 through April 30, 1994

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** September 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–3814.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 10, 1993, the Department of Commerce published in the **Federal Register** (58 FR 27520) the antidumping duty order on dynamic random access memory semiconductors (DRAMS) from the Republic of Korea. On May 4, 1994, the Department published (59 FR 23051) a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period of October 29, 1992, through April 30, 1994. We received timely requests for review from Hyundai Electronics Industries, Co. (Hyundai), Goldstar Electron Co. (Goldstar), and Samsung Electronics Co. (Samsung). The petitioner, Micron Technologies Inc., requested an administrative review of these same three Korean manufacturers of DRAMs. Two interested parties, PNY Electronics and Pulsar Components International, Inc., requested a review of sixteen Japanese resellers of Korean DRAMs. However, these two interested parties subsequently withdrew their request. On June 15, 1994, the Department initiated a review of the above Korean manufacturers (59 FR 30770). The period of review (POR) for all respondents was October 29, 1992, through April 30, 1994.

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

### *Scope of the Review*

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above DRAMs, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

### *United States Price*

In calculating USP, the Department treated respondents' sales as purchase price, as defined in section 772(b) of the Act, when the merchandise was sold to unrelated U.S. purchasers prior to importation. The Department treated respondents' sales as exporter's sale price (ESP), as defined in section 772(c) of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

We calculated purchase price based on packed, f.o.b., f.c.a., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, U.S. commissions, discounts, and rebates in accordance with section 772(d)(2) of the Act.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, credit expenses, warranty expenses, royalty payments, U.S. commissions, advertising and promotion expenses, foreign banking charges, U.S. subsidiary packing expenses and U.S. and Korean indirect selling expenses, including inventory carrying costs in accordance with section 772(d)(2) of the Act. For both purchase price and ESP sales, we added duty drawback, where applicable, pursuant to section 772(d)(1)(B) of the Act.

We adjusted USP for taxes in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less-Than-Fair-Value (LTFV),* 59 FR 31204 (June 17, 1994). For DRAMs that were further manufactured into memory modules after importation, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs of the materials, fabrication, and general expenses associated with the portion of the merchandise further manufactured in the United States, as well as a proportional amount of profit or loss attributable to the value added. *See, e.g., Notice of Final Determination of Sales at LTFV; Certain Hot-Rolled Carbon Steel Flat Product, Certain Cold-Rolled Carbon Steel Flat Product, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France,* 58 FR 37125 (July 9, 1993). Profit or loss was calculated by deducting from the sales price of the memory module all production and selling costs incurred by the company for the memory module. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the valued added was deducted. In determining the costs incurred to produce the memory module, we included materials, fabrication, and general expenses, including selling expenses and interest expenses. No other adjustments were claimed or allowed.

### *Foreign Market Value*

In order to determine whether there were sufficient sales of DRAMs in the

home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of DRAMs to the volume of third country sales of DRAMs, in accordance with section 773(a)(1) of the Act. All three respondents had viable home markets with respect to sales of DRAMs made during the POR in accordance with 19 CFR 353.48(a). The Department relied on monthly weighted-average home market prices in the calculation of FMV.

Because Goldstar made some home market sales to related parties during the POR, we tested these sales to ensure that, on average, the related party sales were at arms length. To conduct this test, we compared the gross unit prices of sales to related and unrelated customers net of all movement charges, direct and indirect selling expenses, valued-added tax and packing. *See Final Determination of Sales at LTFV; Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Appendix II,* 58 FR 87062 (July 9, 1993). Based on the results of that test, we discarded from Goldstar's home market database all related party sales not made at arm's length. *See Notice of Final Determination of Sales at LTFV; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Brazil,* 60 FR 31960, 31971 (June 19, 1995).

Because the Department found sales made at prices less than the cost of production (COP) during the less than fair value (LTFV) investigation, in accordance with our standard practice, we found reasonable grounds to believe or suspect that all three respondents had made sales at prices below the COP in the home market during the POR. Thus in accordance with section 773(b) of the Act, we examined whether the home market sales of each model were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

We performed a model-specific COP test, in which we examined whether each home market sale was priced below the merchandise's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packaging costs (19 CFR 353.51(c)(1994)). *See Stainless Steel Hollow Products from Sweden; Preliminary Results of Antidumping Duty Administrative Review,* 59 FR 40521 (August 9, 1994). For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses.

For each model where less than ten percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where ten percent or more, but less than ninety percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where ninety percent or more of the home market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model from our analysis. *See Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 50670 (April 27, 1995).

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months during the POR in which each model was sold. If a product was sold in fewer than three months during the POR, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POR. *Id.*

Finally, respondents did not provide any information, nor is there any information on the record of this proceeding which indicates recovery of all costs within a reasonable period of time for sales found to have been made at prices below the cost of production. Therefore, in accordance with our practice, we have disregarded respondents' sales found to have been made at prices below the COP in substantial quantities over an extended period of time, which would not permit recovery of all costs within a reasonable period of time in the normal course of trade.

We calculated the COP for the merchandise based on the sum of each respondent's material costs, fabrication costs and general expenses in accordance with section 353.51(c) of the Department's regulations (19 CFR 353.51(c) (1994)). We adjusted respondents' cost data as described below:

For Hyundai, the Department relied on the submitted COP and constructed value (CV) information, except in the following instances where the costs were not appropriately quantified or valued:

1. We reclassified certain capitalized costs from R&D to current costs of production. We recalculated R&D costs to reflect the current costs incurred for all semiconductors.

2. We revised interest expense to reflect the proportional amount incurred by the semiconductor business.

For Goldstar, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated R&D costs to reflect the current costs incurred for all semiconductors.

For Samsung, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated R&D costs to reflect the current costs incurred for all semiconductors.

2. We revised interest expense to reflect the proportional amount incurred by the semiconductor business.

When all home market sales of a such or similar product in the contemporaneous month (as identified in the July 19, 1994 model match memorandum) were excluded from our analysis because the home market sales were priced below the COP, or when no home market sales of such or similar merchandise were found, then we used the CV of the merchandise sold in the United States as the basis for FMV in accordance with section 773(e) of the Act. We calculated the CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacture of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, and home market profit. The cost of manufacture of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, in accordance with section 773(e)(B)(i) of our regulations, we used the larger of the actual SG&A expenses reported by the respondents or ten percent of the cost of manufacture, the statutory minimum for foreign SG&A expenses. For home market profit, in accordance with section 773(e)(B)(ii) of our regulations, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of cost of manufacture and SG&A expenses. *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Preliminary Results of Antidumping*

*Duty Administrative Review,* 59 FR 35098, 35100 (July 8, 1994).

We calculated FMV based on delivered prices to unrelated customers and, where appropriate, to related customers in the home market. In calculating FMV, we made adjustments, where appropriate, for inland freight, inland insurance, discounts, rebates, Korean brokerage and handling charges, and home market credit expenses. We adjusted for Korean consumption tax in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at LTFV,* 59 FR 31204 (June 17, 1994). We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV. We also made, where applicable, difference-in-merchandise adjustments.

For comparison to purchase price sales, pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments to the FMV, where appropriate, for bank charges, royalty payments, and advertising. We made further adjustments, where appropriate, for U.S. commissions and credit expenses in accordance with 19 CFR 353.56(a)(2). Where commissions were paid on U.S. sales and not paid on home market sales, we allowed an offset to FMV amounting to the lesser of the weighted-average home market indirect selling expenses, or the U.S. commissions in accordance with 19 CFR 353.56(b) of our regulations.

For comparison to ESP sales, we made deductions, where appropriate, for credit expenses, royalty payments, bank charges and advertising expenses. We also allowed an ESP offset to the FMV, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or he total U.S. indirect selling expenses plus commissions in accordance with 19 CFR 353.56(b)(2).

No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that the following margins exist for the POR:

| Manufacturer/exporter | Percent margin |
|---|---|
| Hyundai Electronics Co., Ltd. . | 0.202 (de minimis) |
| Samsung Electronics Co., Ltd. | 0.9936 (de minimis) |
| Goldstar Electron Co., Ltd. ..... | 0.319 (de minimis) |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and the FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of dynamic random access memory semiconductors of one megabit and above, assembled or unassembled, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act.

(1) The cash deposit rate for the reviewed companies will be those rate established in the preliminary results of this review (except that no deposit will be required for firms with zero or de minimis margins; *i.e.,* margins less than 0.5%);

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review or in the original LTFV investigation, 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) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 3.85%, the ''all other'' rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary 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 this 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.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 16, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–22501 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–05–M

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**[A–533–806]**

## Sulfanilic Acid From India: Termination of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Termination of Antidumping Administrative Review.

**SUMMARY:** On April 14, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 19017) the notice of initiation of the administrative review of the antidumping duty order on sulfanilic acid from India. This review has now been terminated as a result of a request by the respondents.

**EFFECTIVE DATE:** September 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Todd Peterson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4195.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 29, 1995, Kokan Synthetics and M/S Kay International (collectively ''Kokan and M/S Kay''), requested an administrative review of the antidumping duty order on sulfanilic acid from India for the period March 1, 1994, through February 28, 1995, pursuant to 19 CFR 353.22(a)(5). On April 14, 1995, the Department published in the **Federal Register** (60

FR 19017) the notice of initiation of that administrative review.

Kokan and M/S Kay timely withdrew their request for a review on June 26, 1995, pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675 and 19 CFR 353.22(a)(5).

Dated: August 30, 1995.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–22502 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–M

## North American Free Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Binational Panel

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Decision of Binational Panel.

**SUMMARY:** On August 30, 1995 the binational panel in Secretariat Case Number MEX–94–1904–02 issued its decision. This panel was convened to review the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial (SECOFI) with respect to Imports of Cut-Length Plate, Covered by Customs Tariff Classifications 7208.32.01, 7208.33.01, 7208.42.01 and 7208.43.01 of the Tariff Schedule of the General Tax Import Law, Originating in and Entering from the United States of America. The panel majority remanded the determination to SECOFI to issue a new determination within 21 days (by September 20, 1995) that terminates the proceeding. A copy of the complete panel decision is available from the NAFTA Secretariat.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The binational panel review in this matter was conducted in accordance with these Rules.

### Background

On September 1, 1994, Bethlehem Steel Corporation filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. On the same date, a Request for Panel Review was also filed by US Steel Group, a unit of USX Corporation. Panel review was requested of the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial with respect to Imports of Cut-Length Plate, Covered by Customs Tariff Classifications 7208.32.01, 7208.33.01, 7208.42.01 and 7208.43.01 of the Tariff Schedule of the General Tax Import Law, Originating in and Entering from the United States of America. This determination was published in the *Diario Oficial* on Tuesday August 2, 1994. The NAFTA Secretariat has assigned Case Number MEX–94–1904–02 to this request.

Complaints were filed by both requestors challenging SECOFI's final determination in three areas:

1. Jurisdictional and technical errors;
2. Errors in the calculation of the dumping margin; and
3. Errors in causation and injury determinations.

### Standard of Review

In reviewing SECOFI's final determination, the Panel determined that it must apply the standard of review and the general legal principles that a Mexican court (the Fiscal Tribunal) would apply when it reviews a final determination by SECOFI. The Panel interpreted this obligation to require it to apply Article 238 of the Federal Fiscal Code, in conjunction with Articles 237 and 239, to the maximum extent, consistent with the nature of the binational panel review process.

In deciding whether SECOFI's determination under this standard of review was in accordance with the antidumping law of Mexico, the Panel also determined that it was required to examine the applicable provisions of the Mexican Constitution, treaties, statutes, legislative history, regulations, administrative practice and judicial precedents—all to the extent that the Mexican Fiscal Tribunal would have relied on such legal sources.

The Panel further found that the guarantees of legality and legal security contained in Articles 14 and 16 of the Mexican Constitution impact both the interpretation to be given to the standard of review and to the substance and procedure of any Mexican antidumping proceeding. A primary function of judicial review by Mexican courts and, consequently, by the Panel, is the enforcement of these guarantees. The Panel concluded that in order for the actions of Mexican authorities to be legal, the agency issuing or carrying out such functions or performing such acts, must be ''competent'': the existence of the acting entity or unit must be formally established in a legal provision; and that entity or unit must only act in accordance with the express authority granted it by Mexican law.

### Panel Decision

In its decision the majority of the Panel only addressed itself to Complainants' first areas of challenges—that SECOFI's actions were illegal because of jurisdictional errors—since as a consequence of its findings, the other areas of challenge became unnecessary to address.

The Panel decided the following:

1. The two administrative units that carried out the antidumping investigation and proceeding in its early stages (December 4, 1992–April 1, 1993), namely the Direccion General de Practicas Commerciales Internacionales (DGPCI) and the Direccion de Cuotas Compensatorias (DCC), were incompetent to do so. They were not duly created and established in the manner required by Mexican Law, and, therefore, their actions were illegal.
2. The visitation orders of July 13 and 14, 1993 were illegal because they were issued by an administrative unit that was incompetent to act.
3. The verification visits that took place on July 19–21, 1993 were performed in part by public officers (Director and Assistant Director of Investigation of Dumping and Subsidies) who lacked competence to act in that capacity because their administrative units had not been legally established.
4. The ''external advisors'' who participated in the verification visits also lacked competence to act.

**Order of the Panel**

Pursuant to NAFTA Article 1904.8, the Panel remanded SECOFI's Final Determination to SECOFI for action not inconsistent with its decision. In particular, it directed SECOFI to issue a new determination within 21 days that terminates the proceeding against the Complainants and provides that:

1. The exports of USX and Bethlehem of the goods subject to this proceeding enter Mexican territory with zero antidumping duties applied to them upon their importation; and

2. Any cash deposits or customs bonds relative to antidumping duties made or posted by the importers, in order to import the goods manufactured by USX and Bethlehem, be refunded or cancelled as appropriate.

Dated: September 5, 1995.

**James R. Holbein,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 95–22435 Filed 9–8–95; 8:45 am]

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## National Institute of Standards and Technology

## Notice of Government Owned Inventions Available for Licensing

**SUMMARY:** The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

**SUPPLEMENTARY INFORMATION:** The inventions available for licensing are:

*NIST Docket No. 93–063*

*Title:* Polymeric Amorphous Calcium Phosphate Compositions.

*Description:* Polymeric composites that can provide long-term release of calcium and phosphate ions in biological environments at levels conducive to the formation of hydroxyapatite have been developed. These composites utilize as their filler phase amorphous calcium phosphate, which is highly soluble and rapidly converts to hydroxyapatite. Such biomaterials have the potential to remineralize defective mineralized tissues such as bone or teeth.

*NIST Docket No. 94–043*

*Title:* Low Cost Renewable Polishing Lap.

*Description:* Researchers in the Precision Engineering Division at the National Institute of Standards and Technology have developed a new method for the fabrication of laps wherein the substrate never contacts the polishing media or part being polished. The invention provides the potential to eliminate contamination of the part and/or degradation of the substrate. The concept offers the potential to significantly lower costs in appropriate applications.

*NIST Docket No. 95–023D*

*Title:* Methods and Electrolyte Compositions for Electrodepositing Chromium Coatings.

*Description:* A NIST process deposits chromium plating up to 600 microns thick. The plating process uses nontoxic trivalent chromium to produce a plating three to four times harder, after heating, than depositions using hexavalent chromium.

Dated: September 5, 1995.

**Samuel Kramer,**

*Associate Director.*

[FR Doc. 95–22509 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–13–M

## Open Forum on Laboratory Accreditation

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice announces an Open Forum for discussion of issues in laboratory accreditation. The forum is co-sponsored by ACIL (formerly American Council of Independent Laboratories), the American National Standards Institute (ANSI), and the National Institute of Standards and Technology (NIST). We invite all interested parties to attend and participate in defining needs for a more streamlined system to eliminate current duplication and unnecessary costs in laboratory accreditation. We hope to stimulate discussion on means for achieving greater compatibility, coordination, and mutual recognition of competent laboratory accreditation programs.

**DATES:** The forum will take place on Friday, October 13, 1995, at 9 a.m.

**ADDRESSES:** The forum will be held in the Red Auditorium at the National Institute of Standards and Technology, Gaithersburg, Maryland.

To register to attend the Open Forum and pay the $50 registration fee, interested parties may contact Lori Phillips, NIST, Administration Building, Room B–116, Gaithersburg, Maryland 20899, (301) 975–4513, facsimile (301) 948–2067.

**FOR FURTHER INFORMATION CONTACT:** Belinda Collins, Director, Office of Standards Services, NIST, (301) 975–4000, facsimile (301) 963–2871.

**SUPPLEMENTARY INFORMATION:**

**Background**

NIST, ACIL, and ANSI have explored issues facing both the private sector and government in laboratory accreditation. Multiple, duplicate assessments occur frequently for many laboratories, wasting resources for all parties. Procedures need to be developed, toward a goal of one assessment per laboratory, that are in accord with international guidelines and recognized by all who require laboratory accreditation. Laboratories, accreditors, industry, and federal and state governments must be considered, and the procedures must mesh with domestic and international requirements.

Problems of multiple and/or duplicate accreditations result from accreditation requirements that lack assurance for reciprocity, or constrain acceptance from outside sectors. Challenges raised by the National Research Council study, Standards, Conformity, Assessment and Trade,'' * * * domestic policies and procedures for assessing conformity of products and processes to standards require urgent improvement'' must be addressed.

Speakers will address accreditation issues and problems related to trade needs, international perspectives, and U.S. economic impacts. They will consider the need for joint approaches by the private sector and government to further opportunities for greater acceptance of and reciprocity in laboratory accreditation programs.

**Forum Announcement**

*Laboratory Accreditation in the United States*

ACIL, ANSI, and NIST are cosponsoring an Open Forum for discussion of issues in laboratory accreditation. The forum will be an opportunity to define the needs for a more streamlined system to eliminate current duplication and unnecessary costs. There is widespread agreement

that the current situation results in unnessary burdens. The forum is intended to stimulate discussion on means for achieving greater compatibility, coordination, and mutual recognition of competent laboratory accreditations. All interested parties are invited to attend and to express their views.

To date, several task groups have assessed the problems encountered by their communities. The various stakeholders include laboratories and their customers, accreditation organizations, industry, and government at all levels. They report overlapping and contradictory requirements among regulations, contractual specifications, and other voluntary applications, as well as a lack of reciprocity among bodies. The consequent duplication of effort costs time and money and seriously degrades U.S. competitiveness in domestic and global markets.

Laboratories, accreditors, manufacturers, the National Environmental Laboratory Accreditation Conference (NELAC), and government representatives, both federal and state, will present their views. They will discuss the cost of multiple accreditations for individual laboratories; conflicting requirements of those requiring accreditation; special programs tailored to narrow customer or supplier bases; non-uniformity of requirements and lack of reciprocity; international trade implications; and other pertinent factors.

A panel discussion and open exchange of ideas at the October 13 forum will explore concepts for future collaboration that will lead to ''one-stop shopping'' in laboratory accreditation.

Dated: September 5, 1995.

**Samuel Kramer,**

*Associate Director.*

[FR Doc. 95–22508 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–13–M

## National Oceanic and Atmospheric Administration

**[I.D. 083095E]**

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of modification to permit no. 918 (P191E).

**SUMMARY:** Notice is hereby given that on August 30, 1995, Permit No. 918, issued to California Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814, was modified.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/712–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** E. Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as admended (16 U.S.C. 1543 et seq.), the regulations governing endangered species permit (50 CFR 217–222), the Fur Seal Act of 1966, and the regulations governing the taking of fur seals (50 CFR 215).

The Permit authorizes up to 30,000 Pacific harbor seals to be inadvertently harassed annually during aerial surveys and an unspecified number of California sea lions (*Zalophus californianus*), Northern elephant seals (*Mirounga angustrirostris*), and Northern fur seals (*Callorhinus ursinus*) will be opportunistically harassed during these surveys. This Permit was extended until September 30, 1999.

Dated: August 31, 1995.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–22402 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–22–F

**[I.D. 090195C]**

## New England Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

**DATES:** The meeting will be held on September 13, 1995, at 10:00 a.m. and on September 14, 1995, at 9:00 a.m.

**ADDRESSES:** The meeting will be held at the Mariner's Church Banquet Center, 368 Fore Street, Portland, ME; telephone: (207) 774–7016.

*Council address*: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, telephone: (617) 231–0422.

**SUPPLEMENTARY INFORMATION:** On September 13, the morning session will commence with a report from the Groundfish Committee on the status of Amendment #7 to the Northeast Multispecies Fishery Management Plan (FMP). There also will be an update and recommendation from the Aquaculture Committee on the Westport Scalloping enhancement project.

The Marine Mammal Committee will report during the afternoon session. Following that discussion, the Monkfish Committee will report on the progress to develop a monkfish total allowable catch and evaluate trip limits and qualification criteria for limited access, directed monkfish permits. This will be followed by the Gear Conflict Committee update on the Council's request for emergency action to close areas defined in the Southern New England Deepwater Gear Conflict Resolution.

On September 14, the morning session will begin with an update from the Lobster Committee Chairman on the progress of Amendment #6 to the Lobster FMP. Later, reports will be received from the Council Chairman, Executive Director, Northeast Regional Director, Northeast Fisheries Science Center, Atlantic States Marine Fisheries Commission, U.S. Coast Guard and the Mid-Atlantic Council Liaison.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at the Council (see **ADDRESSES**), at least 5 days prior to the meeting date.

Dated: September 5, 1995.

**Richard W. Surdi,**

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

[FR Doc. 95–22403 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–22–F

## COMPETITIVENESS POLICY COUNCIL

## Notice of Forthcoming Meeting

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the

Competitiveness Policy Council announces a forthcoming meeting.

**DATES:** September 14; 2 p.m. to 5 p.m.

**ADDRESSES:** Dirksen Senate Office Building, Room 11, Washington, D.C. 20510.

**FOR FURTHER INFORMATION CONTACT:** Howard Rosen, Executive Director, Competitiveness Policy Council, Suite 300, 1726 M Street, N.W., Washington, D.C. 20036, 632–1307.

**SUPPLEMENTARY INFORMATION:** The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the US economy. The Council's chairman, Dr. C. Fred Bergsten, will chair the meeting.

The meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

*Type of Meeting:* Open.

*Agenda:* The Council will discuss its annual report and consider additional business as suggested by its members.

Dated: September 5, 1995.

**C. Fred Bergsten,**

*Chairman, Competitiveness Policy Council.*

[FR Doc. 95–22604 Filed 9–8–95; 8:45 am]

BILLING CODE 4739–54–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paper Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Control Number:* Recreation Research—Use Surveys; OMB Control Number 0710–0002.

*Type of Request:* Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register**.

*Number of Respondents:* 37,500.

*Responses Per Respondent:* 1.

*Annual Responses:* 37,500.

*Average Burden Per Response:* 5 minutes.

*Annual Burden Hours:* 3,000.

*Needs and Uses:* The information collected hereby, will be used to enhance research efforts directed toward evaluation, as well as increasing cost efficiency of, planning, design, and management of Corps of Engineers projects. It is also used to report visit information to Congress as required by statute.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Timothy G. Hunt.

Written comments and recommendations on the proposed information collection should be sent to Mr. Hunt at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 6, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–22453 Filed 9–8–95; 8:45 am]

BILLING CODE 5000–04–M

## Office of the Secretary

### Meeting of the Semiconductor Technology Council; Notice

**SUMMARY:** Under the provisions of PL 92–463, the ''Federal Advisory Committee Act,'' notice is hereby given that the Semiconductor Technology Council will hold its third meeting. The Council's mission is to: Link industry and national security needs to opportunities for cooperative investments, foster pre-competitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c) (3) and (4), Title 5, U.S.C. There will be an open section from 12:30 to 1:30 p.m. for a discussion of MicroElectroMechanical Systems (MEMS) technology. Advanced registration is required for this session.

**DATES:** September 18, 1995.

**ADDRESSES:** 1300 N. 17th St., Suite 1450, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lance Glasser, Director, ARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2213.

Dated: September 6, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–22454 Filed 9–8–95; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Army; Corps of Engineers

### Intent to Prepare an Environmental Impact Statement for the Proposed McDonald Gold Project, Lincoln, MT

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The proposed action is an open-pit mining operation with ore processed by heap leaching, and gold and silver recovered by carbon adsorption. The project would be located in Lewis and Clark County, approximately 8 miles east of Lincoln, Montana. The project area covers 5,400 acres above the confluence of the Landers Fork with the Blackfoot River. The majority of the gold deposit lies on state land in Section 6, T14N, R7W. Major facilities would include rock piles, heap leach pads, solution ponds, processing equipment, and auxiliary buildings. Two miles of Montana Highway 200 would relocated 1,200 feet to the south. A project life of 25 years, from construction to reclamation, is anticipated.

The applicant has determined that 205 million tons of ore can be mined and processed economically at a gold price of $375/ounce. This will require the removal of 440 million tons of barren rock to uncover the ore, for a total of over 600 million tons of rock to be removed from the open pit. Phelps Dodge Mining Company, the majority partner in the Seven-Up Pete Joint Venture, will be the operator of the proposed mine. Phelps Dodge advocates a commitment to mining in an environmentally responsible manner.

The Seven-Up Pete Joint Venture identified 16 candidate sites for either rock pile or heap leach sites. All sites were within a 4-mile radius of the McDonald gold deposit. The Co-Lead agencies for preparation of the EIS have requested the applicant to consider additional alternative sites, and that some facilities be broken into smaller units (i.e., three 100 million ton waste rock piles instead of one 300 million ton waste rock pile. The Lead Agencies will

also specifically solicit comments from cooperating agencies and the interested public regarding alternatives.

**DATES:** Public Scoping Meeting, October 12, 1995, 7 p.m., Lincoln Community Hall, Lincoln, Montana.

**ADDRESSES:** U.S. Army Corps of Engineers, Omaha District, Planning Division, 215 North 17th Street, Omaha, Nebraska 68102–4978; Montana Department of Environmental Quality, Hard Rock Bureau, Reclamation Division, 1625 11th Avenue Helena, Montana 59620–1601.

**FOR FURTHER INFORMATION CONTACT:** Bob Nebel, U.S. Army Corps of Engineers, (402) 221–4621, or Jim Robinson, Montana Department of Environmental Quality, (406) 444–4958.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

FR Doc. 95–22437 Filed 9–8–95; 8:45 am]

BILLING CODE 3710–62–M

## Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lower Atchafalaya Basin Reevaluation Study, Louisiana

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** This study proposes to develop recommendable solutions for flood control, navigation, and environmental problems in the Atchafalaya Basin Floodway System and adjacent backwater areas. Alternatives being considered consist of various structural and non-structural measures, and will be compared to the no-action alternative.

**FOR FURTHER INFORMATION:** Questions regarding the proposed study should be addressed to Mr. Troy Constance, U.S. Army Corps of Engineers, Planning Division (CELMN–PD–FB), P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2742.

**SUPPLEMENTARY INFORMATION:** 1. *Authority.* The Atchafalaya Basin project was authorized by the Flood Control Act of 1928 and subsequently modified by the Acts of 1934, 1936, 1938, 1941, 1946, 1950, and 1954. The United States Senate Report to the 1994 Energy and Water Development Act (PL 103–126), dated 28 October 1993, directed the Corps to use available funds to investigate conditions at Wax Lake Outlet, Bayou Black, and other features and recommend any modifications desirable for flood protection, navigation, and environmental management.

2. *Proposed Action.* Under the proposed action, the existing project will be investigated to identify possible improvements to the navigation, flood control, environmental, and operation and maintenance features of the Atchafalaya Basin Floodway System, Louisiana, project.

3. *Alternatives.* The alternatives being considered include regulating water distribution in the lower floodway between the Lower Atchafalaya River and the Wax Lake Outlet; construction of a barrier around Morgan City, Louisiana, to prevent flooding from river backflooding events, moving the navigation channel from the Lower Atchafalaya River; and channel development in the upper backwater areas to facilitate drainage from rainfall events.

4. *Scoping Process.* a. Public input for scoping will be achieved through the distribution of a widely circulated Scoping Input Request to all segments of the public having an interest in the study/project. In addition, scoping meetings will be held in the vicinity of Plaquemine, Morgan City, and New Iberia, Louisiana, to request submission of views on alternatives, significant resources in the study area, and any other study-related issue considered important. Comments received as a result of this process will be compiled and analyzed, and a Scoping Document summarizing the results will be made available to all respondents.

b. A tentative list of significant resources to be evaluated in the EIS includes: wetlands; navigation facilities; flood control facilities; cultural resources; socio-economic resources; biological resources, including endangered and threatened species; recreational resources, and water quality.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service concerning endangered species. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. We will prepare a Section 404(b)(1) evaluation for review by the U.S. Environmental Protection Agency and other interested parties. Coordination will be maintained with the Advisory Council on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. Application will be made to the Louisiana Department of Environmental Quality for a Water Quality Certificate.

d. A 45-day public review period will be allowed so that all interested agencies, groups, and individuals will have the opportunity to comment on the DEIS.

5. *Availability.* The DEIS is scheduled to be available to the public during the fall of 1998.

**Kenneth H. Clow,**

*Colonel, U.S. Army District Engineer.*

[FR Doc. 95–22436 Filed 9–8–95; 8:45 am]

BILLING CODE 3710–84–M

## Environmental Assessment and Finding of No Significant Impact for the Proposed Consolidation of the Finance and Accounting Activities of the U.S.Army Corps of Engineers (USACE) to Memphis, TN

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of availability.

**SUMMARY:** This notice of availability is for the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared for the consolidation of the finance and accounting activities of Corps' district, division and headquarters offices under the Department of Defense's Centralized Service to Millington Naval Air Station (NAS), Memphis, Tennessee.

The establishment of the USACE Finance Center (UFC) would provide the vehicle to realign existing resources to facilitate the continued development of Corps of Engineers Financial Management System (CEFMS) and deployment to all 60 USACE locations. Over a three year period CEFMS deployment and establishment of the UFC would enable USACE to consolidate the operating finance and accounting functions currently performed in all 60 locations into one site, freeing up about 67% FTE/Manyears for redistribution or savings. The consistency/standardization of business processes in a CEFMS/single Finance & Accounting operating site would also enhance productivity and quality throughout USACE and provide additional opportunities for redistribution of effort.

The No Action alternative was evaluated and deemed unacceptable because it maintains the present finance and accounting activities at district, division, and headquarters. This alternative would not capitalize on savings which could be realized if the action was implemented. Therefore, the No Action alternative was not considered further.

Although the proposed consolidation would have some adverse socioeconomic effect on the employees displaced or whose jobs are terminated, the effects of this consolidation on the natural and physical environment would not be significant. Under consolidation the financial management functions will continue to be performed; the only change would be that some of these functions will be performed in a different city. The actual physical displacement of the Corps' employees relocating to Memphis, Tennessee, should not have a significant effect on the environment. Affected Corps' headquarters, division and district offices are almost exclusively located within urban areas. The consolidation would require the Corps to dispose of office space in some cities and to lease or utilize existing office space at Millington NAS in Memphis, Tennessee. Again, because this activity would be confined primarily to urban areas, the environmental impact of this action would be minimal. Therefore, an environmental impact statement will not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Hand, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, Alabama 36628–0001, (334) 694–3881.

**SUPPLEMENTARY INFORMATION:** Copies of the EA and FONSI will be available to the public for review for 30 days following publication of this notice.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 95–22438 Filed 9–8–95; 8:45 am]

**BILLING CODE 3710–92–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER95–1630–000, et al.]**

## PECO Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 1, 1995.

Take notice that the following filings have been made with the Commission:

### 1. PECO Energy Company

[Docket No. ER95–1630–000]

Take notice that on August 28, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 17, 1995, with Ohio Edison Company (OE) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds OE as a customer under the Tariff.

PECO requests an effective date of August 17, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to OE and to the Pennsylvania Public Utility Commission.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. PECO Energy Company

[Docket No. ER95–1631–000]

Take notice that on August 28, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 22, 1995, with LG&E Power Marketing Inc. (LG&E) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds LG&E as a customer under the Tariff.

PECO requests an effective date of August 22, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to LG&E and to the Pennsylvania Public Utility Commission.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 3. PECO Energy Company

[Docket No. ER95–1632–000]

Take notice that on August 28, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 22, 1995, with Northern Indiana Public Service Company (NIPSCO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NIPSCO as a customer under the Tariff.

PECO requests an effective date of August 22, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NIPSCO and to the Pennsylvania Public Utility Commission.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 4. Engelhard Power Marketing, Inc.

[Docket No. ER95–1633–000]

Take notice that on August 28, 1995, Engelhard Power Marketing, Inc. (ENGL), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that ENGL had completed all the steps for pool membership. ENGL requests that the Commission amend the WSPP Agreement to include it as a member.

ENGL requests an effective date of August 17, 1995, for the proposed amendment. Accordingly, ENGL requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 5. Illinois Power Company

[Docket No. ER95–1634–000]

Take notice that on August 28, 1995, Illinois Power Company (Illinois), tendered for filing an Interchange Agreement between Illinois and Kimball Power Company (Kimball). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and Kimball.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 6. Northeast Utilities Service Company

[Docket No. ER95–1635–000]

Take notice that on August 28, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a unit exchange agreement between NUSCO, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, and Central Maine Power Company (CMP).

NUSCO states that a copy of this filing has been mailed to CMP.

NUSCO requests that the Agreement become effective on November 1, 1995.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 7. Delmarva Power and Light Company

[Docket No. ER95–1639–000]

Take notice that on August 28, 1995, Delmarva Power and Light Company (Delmarva Power), tendered for filing a tariff providing for comprehensive transmission service. Delmarva Power states that its filing modifies its Tariff No. 2 that was filed in Docket No. ER95–222–000 and that its tariff is consistent with the draft pro forma tariffs the Commission included with the proposed rule in ''Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities,'' Docket No. RM95–8–000, IV FERC Stats. and Regs. ¶32,514 (1995). Delmarva Power asks the Commission to set an effective date for this filing of November 1, 1995.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Delmarva Power & Light Company**

[Docket No. ER95–1640–000]

Take notice that on August 28, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, tendered for filing revised rate schedule sheets, and a request to suspend the operation of its fuel clause for the purposes of making a one-time refund of fuel expense over-collections and of resetting its Fuel Adjustments. The Company is proposing several revisions to its rate schedules to define more clearly the operation of the fuel adjustment clause. These revisions involve the following customers and rate schedules: Seaford, Rate Schedule 62; Berlin, Rate Schedule 63; Middletown, Rate Schedule 65; and Smyrna, Rate Schedule 68. Delmarva requests an effective date of October 27, 1995.

*Comment date:* September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Brooklyn Navy Yard Cogeneration Partners, L.P.**

[Docket No. QF95–302–000]

On August 16, 1995, Brooklyn Navy Yard Cogeneration Partners, L.P. of 366 Madison Avenue, Suite 1103, New York, New York 10017, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fired topping-cycle cogeneration facility is located in Kings County, Brooklyn, New York. The facility will consist of two combustion turbine generators, two unfired heat recovery boilers, two extraction/condensing steam turbine generators, and related interconnection equipment. The maximum net power production capacity of the facility will be 315 MW. Thermal energy recovered from the facility will be used for space heating, water distillation and waste water treatment purposes. Installation of the facility began in January of 1995.

*Comment date:* October 11, 1995 in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

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. 95–22451 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. CP95–709–000, et al.]**

## Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 1, 1995.

Take notice that the following filings have been made with the Commission:

**1. Southern Natural Gas Company**

[Docket No. CP95–709–000]

Take notice that on August 25, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–709–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to relocate certain delivery point facilities which serve Dalton Utilities (Dalton). Southern makes such request, under its blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Southern proposes to abandon two four-inch meter runs, a heater and some regulating equipment at its existing Dalton No. 2 Delivery Point which is currently located on Southern's 12-inch Chattanooga Branch Lines in Whitfield County, Georgia. Southern also proposes to construct and operate a dual 4-inch orifice meter, heater, regulators, and other appurtenant facilities in order to provide transportation service to Dalton No. 2, at the relocation cite. It is stated that Southern proposes to relocate the facilities to a site on its 12-inch Chattanooga Branch Lines in Whitfield County, Georgia. The estimated cost of the relocation of the delivery facilities is approximately $101,500. It is indicated that Dalton will reimburse Southern for the total actual cost of relocating the facilities. Dalton has requested the relocation to serve more efficiently the gas requirements on its distribution system which are growing in the area of the proposed relocation point.

Southern states that it will continue to transport gas to the relocated Dalton No. 2 delivery point, pursuant to its Rate Schedules FT and IT. Dalton does not propose to add or change any transportation demand to its firm service as a result of the relocation of the delivery point. Southern further states that the installation of the proposed facilities will have no adverse impact on its peak day or firm requirements.

*Comment date:* October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

**2. Colorado Interstate Gas Company**

[Docket No. CP95–711–000]

Take notice that on August 25, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–711–000 a request pursuant to Sections 157.205, 157.216 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.212) for authorization to abandon the existing Fort Lupton taps and to construct new delivery facilities at the same location for Public Service Company of Colorado (PSCo), a local distribution company, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to abandon two taps and construct a new meter station and appurtenant facilities at Section 34, Township 2 North, Range 66 West, Weld County, Colorado. The proposed new facilities are to be bi-directional, will increase deliverability and will cost $506,600. The deliveries at the Fort Lupton delivery point will provide service to PSCo's Fort St. Vrain power plant and other loads in the area. Currently, there is 15,500 Dth/d of entitlement under existing agreements, but after the proposed installation, the initial deliveries will be up to 100,000 Dth/d. The total annual and daily contract entitlement for the contracts serving the Fort Lupton delivery facilities are within the certificated entitlements. CIG's existing tariff does not prohibit this change and CIG states that there is sufficient capacity to accomplish the increased deliveries

without detriment or disadvantage to other customers.

*Comment date:* October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

**3. Colorado Interstate Gas Company**

[Docket No. CP95–712–000]

Take notice that on August 25, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–712–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate a new delivery point, the South Bennett delivery facilities, for service under CIG's existing Rate Schedule NNT–2 for Eastern Colorado Utility Company (Eastern Colorado), a local distribution company, in Arapahoe County, Colorado under the blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that it will operate a tap, two-inch tee, valve, approximately 50 feet of two-inch pipe and appurtenant facilities. CIG states that it plans to construct these facilities pursuant to Section 311 of the Natural Gas Policy Act. CIG estimates that cost of the proposed facilities is approximately $10,000. CIG asserts that it will provide transportation service to Eastern Colorado pursuant to its open access blanket certificate; and therefore, it has authorization for the proposed service. Additionally, CIG notes that the proposed service is not prohibited by an existing CIG tariff. CIG states that it has sufficient capacity to accomplish deliveries to the proposed facilities without detriment or disadvantage to CIG's other customers.

CIG states that it does not currently make deliveries to Eastern Colorado at the proposed South Bennett delivery facility. CIG asserts that the proposed facilities will be capable of delivering approximately 850 Dth/d. Additionally, CIG notes that the end use of the gas delivered by CIG to Eastern Colorado will be for new residential development. CIG claims that the impact of the proposed changes will be minimal because of the proposed delivery volume size and the use of an existing agreement.

*Comment date:* October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

**4. Williams Natural Gas Company**

[Docket No. CP95–717–000]

Take notice that on August 29, 1995, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101 filed in Docket No. CP95–717–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to utilize the facilities originally installed for the delivery of NGPA Section 311 gas to Missouri Gas Energy (MGE) for the Simmons chicken hatchery in McDonald County, Missouri, and for other purposes under Williams' blanket authorization issued in Docket No. CP82–479–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams states that it will utilize the Section 311 facilities installed to deliver transportation gas to MGE for Simmons for any purpose. Williams began delivering gas to MGE for Simmons on July 31, 1995 and reported such initial transportation in Docket No. ST95–3275–000. The authorization Williams is requesting will allow receipt point flexibility in the future. Williams states that is has sufficient capacity to accomplish the deliveries specified without detriment to its other customers.

The cost to construct the facilities was $57,875 which will be partially reimbursed.

*Comment date:* October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22452 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. ER95–1381–000]**

## Alliance Strategies; Notice of Issuance of Order

September 6, 1995.

On July 17, 1995, Alliance Strategies (Alliance) submitted for filing a rate schedule under which Alliance will engage in wholesale electric power and energy transactions as a marketer. Alliance also requested waiver of various Commission regulations. In particular, Alliance requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Alliance.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Alliance should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Alliance is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Alliance's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public

Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22447 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–429–000]**

## ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 1995:

Ninth Revised Sheet No. 8
Eleventh Revised Sheet No. 9
Eleventh Revised Sheet No. 13
Eleventh Revised Sheet No. 16
Thirteenth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.3 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective September 1, 1995.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the 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, 385.214). All such motions or protests should be filed on or before September 11, 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 application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

FR Doc. 95–22408 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–432–000]**

## Columbia Gas Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Columbia Gas Transmission Corporation (Columbia) tendered a filing with the Federal Energy Regulatory Commission (Commission) for proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1995:

First Rev Tenth Revised Sheet No. 25
First Rev Tenth Revised Sheet No. 26
First Rev Tenth Revised Sheet No. 27
First Rev Eleventh Revised Sheet No. 28

Columbia states that this Mid-Cycle Transportation Costs Rate Adjustment (TCRA) filing is being made in accordance with the General Terms and Conditions (GTC) of its FERC Gas Tariff (Section 36) which provides, among other things, that Columbia will adjust its TCRA rates prospectively by means of a filing to become effective October 1 of each year.

Columbia states that copies of its filing have been mailed to all firm customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22411 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–433–000]**

## CNG Transmission Corporation; Notice of Filing of Report of Account No. 191 Costs

September 5, 1995.

Take notice that on August 31, 1995, CNG Transmission Corporation (CNG), filed a report of certain data regarding its Account No. 191 Transition Costs, as required by Section 18.1.D of the General Terms and Conditions of its FERC Gas Tariff.

CNG states that this one-time reporting requirement was established as part of the comprehensive Order No. 636 restructuring settlement among CNG and its customers, in Docket No. RS92–14. Section 18.1.D of the General Terms requires CNG to file a report by September 1, 1995, with supporting workpapers, detailing the adjustments made by CNG under Section 18.1.D. The nature of these adjustments is set forth in seven enumerated categories. As provided under Section 18.1.D., CNG's customers have 45 days to review this report, and to file comments with the Commission.

CNG states that it has previously reported all adjustments as required in categories 1 through 6 of this Section, to support its filings in Docket Nos. RP94–31, RP94–300, and RP95–347.

CNG states that it has served this data upon all affected customers at the time of each filing, and CNG has incorporated this data by reference in the instant report. To satisfy the Section 18.1.D. requirement as to the seventh category, ''amounts received by Pipeline as a result of the direct bill'' under this Section, CNG states that it is providing detailed data regarding the amounts received from each customer through direct bills in Docket Nos. RP94–31, RP94–300, and RP95–347.

CNG states that copies of this report and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before September 11, 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. 95–22409 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–22–000]**

## CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act, Section 154.38(d)(6) of the Commission's Regulations providing for the Annual Charge Adjustment, and Section 14 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to its FERC Gas Tariff, with a proposed effective date of October 1, 1995:

**Second Revised Volume No. 1**

Fifth Revised Sheet No. 31
Tenth Revised Sheet No. 32
Tenth Revised Sheet No. 33
Sixth Revised Sheet No. 35
Sixth Revised Sheet No. 36

**Original Volume No. 2**

Eighth Revised Sheet Nos. 250 and 290

**Original Volume No. 2A**

Eighth Revised Sheet Nos. 18, 28, 35, 48 and 87

CNG states that the proposed tariff sheets reflect a new ACA unit rate of .22 cents per dekatherm.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 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. 95–22410 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–427–000]**

## El Paso Natural Gas Company; Notice of Tariff Filing

September 5, 1995.

Take notice that on August 31, 1995, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, El Paso Natural Gas Company (El Paso) tendered for filing a notice of the following:

(i) A revision to El Paso's Take-or-Pay Buyout and Buydown Monthly Direct Charge and Throughput Surcharge: (a) To reflect the addition of principal dollars to be amortized based upon recent take-or-pay buyout and buydown costs and (b) for interest pursuant to Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery of its Second Revised Volume No. 1–A and Third Revised Volume No. 1, FERC Gas Tariffs, respectively; and

(ii) That the Annual Charge Adjustment (ACA) in accordance with Section 21, Annual Charge Adjustment Provision, of said Volume No. 1–A Tariff does not require a change.

El Paso states that the additional principal dollars to be amortized are El Paso's last remaining take-or-pay case eligible for recovery under its Take-or-Pay Buyout and Buydown Cost Recovery mechanism.

El Paso states that it proposed to amortize the direct bill portion of the additional costs over a period of one month because the aggregate dollar amounts are small and it would be administratively burdensome for the majority of El Paso's customers to have to account and pay for the de minimis direct bill amounts over a more extended period. With respect to the Throughput Surcharge, El Paso states that it proposed to amortize the additional take-or-pay costs over a period extending through March 31, 1996, which is the end of the amortization period for its Take-or-Pay Cost Recovery mechanism. El Paso states that as a result of this filing, the Throughput Surcharge has decreased $.0008 per dth, from $0.0348 to $0.0340 per dth. El Paso further states that its ACA surcharge of $0.0023 per dth to be collected for the fiscal year beginning October 1, 1995 reflects no change.

Pursuant to Section 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it is submitting concurrently herewith, but under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective on October 1, 1995.

El Paso states that copies of the filing were served upon all of El Paso's affected interstate pipeline system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 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. 95–22412 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP95–713–000]**

## El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 5, 1995.

Take notice that on August 25, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a prior notice request with the Commission in Docket No. CP95–713–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point to serve Southwest Gas Corporation (Southwest) in Cochise County, Arizona, under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

El Paso proposes to construct and operate dual one-inch tap and valve assemblies with appurtenances on its

26-inch diameter California Line and 30-inch diameter California First Loop Line in Cochise County. El Paso states that Southwest has agreed to reimburse El Paso for the estimated $21,700 construction cost of the proposed delivery tap. El Paso would deliver to Southwest on a firm basis approximately 24.4 Mcf of natural gas per day, 98 Mcf per peak day, and 8,905 Mcf per year by the third year of operating the proposed tap in the Kartchner Caverns area.

El Paso further states that its tariff allows for construction of the proposed delivery tap and that the volumes to be delivered at the tap are within Southwest's certificated entitlements. El Paso also states that it has sufficient capacity to deliver the requested natural gas volumes to Southwest without detriment or disadvantage to El Paso's other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22413 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER90–1399–000**

## ElecTech, Inc.; Notice of Issuance of Order

September 6, 1995.

On July 19, 1995, ElecTech, Inc. (ElecTech) submitted for filing a rate schedule under which ElecTech will engage in wholesale electric power and energy transactions as a marketer. ElecTech also requested waiver of various Commission regulations. In particular, ElecTech requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ElecTech.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ElecTech should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., 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 385.214).

Absent a request for hearing within this period, ElecTech is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ElecTech's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, D.C. 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22449 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–51–000]**

## Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1995:

Fourth Revised Sheet No. 7

Great Lakes states that the above tariff sheet reflects the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes was established by FERC notice given on July 10, 1995 and is to be effective October 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22414 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–110–000]**

## Iroquois Gas Transmission System L.P.; Notice of Proposed Changes In FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered a filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 4. The proposed effective date of the tariff sheet is October 1, 1995.

Iroquois states that, pursuant to section 154.38(d)(6) of the Commission's regulations and Section 12.2 of the General Terms and Conditions of its Tariff, Iroquois is making its Annual Charge Adjustment (''ACA'') filing to reflect a decrease of $.0001 per Dth (from $.0024 to $.0023 per Dth) in its ACA surcharge.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 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. 95–22415 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER95–1421–000]**

## JPower; Notice of Issuance of Order

September 6, 1995.

On July 21, 1995, JPower (JPower) submitted for filing a rate schedule under which JPower will engage in wholesale electric power and energy transactions as a marketer. JPower also requested waiver of various Commission regulations. In particular, JPower requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by JPower.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by JPower should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, JPower is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of JPower's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

FR Doc. 95–22450 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–46–000]**

## Kentucky West Virginia Gas Company; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 163, to become effective October 1, 1995.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0018 per Dth as converted on Kentucky West's system.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22416 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–99–000]**

## Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet Nos. 5 and 6, to become effective on October 1, 1995.

Kern River states that the purpose of this filing is to establish pursuant to Section 154.38(d)(6)(i) of the Commission's regulations a volumetric/usage rate surcharge of $0.0023 per Mcf applicable to service under all of Kern River's firm and interruptible transportation rate schedules for the period October 1, 1995 through September 30, 1996 (''ACA Surcharge''). This ACA Surcharge will recover the charge assessed on Kern River by the Commission for 1995 pursuant to Part 382 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22417 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. RP95–426–000 TM96–2–25–000]**

## Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing to become part in its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of October 1, 1995:

Thirteenth Revised Sheet No. 5

Thirteenth Revised Sheet No. 6
Eleventh Revised Sheet No. 7
Fourth Revised Sheet No. 8
First Revised Sheet No. 234
First Revised Sheet No. 235
Original Sheet No. 235A

MRT states that the purpose of the filing is to modify the Fuel Use and Loss Adjustment provisions contained in Section 24 of the General Terms and Conditions of its tariff to (1) Permit MRT, when necessary, to submit out-of-cycle Fuel Use and Loss Adjustment filings more frequency than once a year, and (2) permit MRT to assess a Compressor Fuel Tax Surcharge to recover sales and use taxes assessed on a monthly basis by the States of Arkansas and Louisiana on the value of gas consumed as compressor fuel in such states.

MRT states that concurrent with the submission of the proposed tariff modifications it is also proposing to make its first out-of-cycle Fuel Use and Loss Adjustment applicable to Rate Schedules FTS, SCT, ITS, FSS and ISS as well as its first Compressor Fuel Tax Surcharge adjustment.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commission of Arkansas, Illinois, and Missouri.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 11, 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 available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22418 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–16–000]**

## National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995 National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1995.

11th Revised Sheet No. 5
10th Revised Sheet No. 6

National declares that the purpose of this filing is state the Annual Charge Adjustment (ACA) unit surcharge authorized by the Commission for Fiscal 1996 is $.0023 per Mcf or $.0022 per Dth when converted to National's measurement basis.

National states that a copy of this filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before September 11, 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. 95–22419 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–100–000]**

## Nora Transmission Company; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Nora Transmission Company (Nora) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 163 to become effective October 1, 1995.

Nora states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0022 per Dth as converted on Nora's system.

Nora states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22420 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–59–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, proposed to be effective October 1, 1995:

**Fifth Revised Volume No. 1**

Third Revised Seventeenth Revised Sheet No. 50
Third Revised Seventeenth Revised Sheet No. 51
First Revised Sixth Revised Sheet No. 52
Twenty-Second Revised Sheet No. 53
First Revised Sixth Revised Sheet No. 59
First Revised Seventh Revised Sheet No. 60

**Original Volume No. 2**

First Revised 145th Revised Sheet No. 1C
First Revised Twentieth Revised Sheet No. 1C.a

Northern states that the filing establishes the revised Annual Charge Adjustment (ACA) rate effective October 1, 1995, for Northern's transportation rates. The ACA rate is designed to recover the charge assessed by the Commission pursuant to Part 382 of the Commission's Regulations.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214

and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before September 11, 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. 95–22421 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–37–000]**

## Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of October 1, 1995:

**Third Revised Volume No. 1**

First Revised Sixth Revised Sheet No. 5
First Revised Fifth Revised Sheet No. 8

**Original Volume No. 2**

Nineteenth Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to update Northwest's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) factor of .23¢ per Mcf to be effective for the twelve-month period beginning October 1, 1995. The ACA surcharge unit equates to .22¢ per MMBtu based on Northwest's system weighted average of 1037 Btu per cubic foot of gas for the twelve months ended June 30, 1995, and is a reduction of .01¢ per MMBtu from Northwest's current ACA surcharge of .23¢ per MMBtu.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22422 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–64–000]**

## Pacific Interstate Offshore Company; Notice of Change in Rate

September 5, 1995.

Take notice that on August 31, 1995, Pacific Interstate Offshore Company (PIOC) submitted for filing, to be part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 6

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .23 cents per MMBtu, effective October 1, 1995.

PIOC states that a copy of this filing has been served on PIOC's sole customer, the Southern California Gas Company and the Public Utilities Commission of the State of California and other interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22423 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–28–000]**

## Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets list on Appendix A to the filing. Panhandle proposes that these tariff sheets become effective October 1, 1995.

Panhandle states that these revised tariff sheets are being submitted in accordance with Section 18.2 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. This filing reflects the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates for recovery of 1995 Annual Charges pursuant to Order No. 472 in Docket No. RM87–3–000. The surcharge attributable to fiscal year 1995 program costs is $0.0023 per Mcf ($0.0023 per Dt. to reflect Panhandle's billing unit) of natural gas transported.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 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. 95–22424 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 2493–006]**

## Puget Sound Power & Light Company; Notice of Amendment to Application

September 5, 1995.

On June 28, 1995, Puget Sound Power & Light Company (Puget) filed an amendment to its application for a new license for the Snoqualmie River Project No. 2493–006. Puget's application for a new license proposed to make extensive structural modifications to the project to add 31 megawatts (MW) to the existing generation capacity of 42 MW. The amendment was filed as a result of Puget's inability to obtain additional water rights necessary to support its original application.

Puget is now proposing a Refurbished Project that would (1) refurbish the existing diversion dam foundation, in the same location, (2) install an inflatable dam or spillgate system to replace the existing flashboard system, (3) add a 75-foot-long inflatable spillway for flood control, (4) add a sediment exclusion channel to transfer bed load from the Plant 2 intake to pass under the new diversion dam, (5) modify the Plant 1 intake, (6) modify the Plant 1 tailrace channel, (7) remove Units 1–5 penstocks in Plant 1, (8) install new 6-foot and 8-foot diameter penstocks for new Plant 1, Units 1 and 2, (9) install a new Unit 1, sized for 600 cfs, (10) install a new Unit 2, sized for 200 cfs, (11) replace the Plant 1 elevator and elevator house, (12) stabilize the transformer house and machine shops for seismic stability, (13) remove Units 1 through 3 and Unit 5 from Plant 1, (14) retire (in place) Unit 4 in Plant 1, (15) refurbish the existing Plant 2 intake and tunnel, (16) refurbish the existing gatehouse and penstocks for Plant 2, (17) modify the existing Plant 2 forebay for improved safety and operation, (18) upgrade Units 1 and 2 in Plant 2, (19) install a flow bypass system, and (20) refurbish the Plant 2 powerhouse for seismic stability. The Refurbished Project would add 7 MW to the existing 42 MW of generation.

The Refurbished Project proposal also includes instream flows that were identified as potential conditions of a Water Quality Certification by the Washington State Department of Ecology, in a letter dated May 12, 1995.

These proposed minimum instream flows over Snoqualmie Falls are:

From 10 AM to sunset.

| | |
|---|---|
| March 16–March 31 | 200 cfs |
| April 1–April 30 | 450 cfs |
| May 1–May 31 | 700 cfs |
| June 1–June 30 | 450 cfs |
| July 1–July 15 | 200 cfs |
| July 16–March 15 | 100 cfs |

Nighttime flows over the falls would not be less than 25 cfs.

A Minor Upgrade alternative that is substantially similar to the Refurbished Project proposal described above was addressed in the draft Environmental Impact Statement issued on November 18, 1994. The Refurbished Project, like the Minor Upgrade alternative, would not increase the 2,500 cubic feet per second (cfs) hydraulic capacity of the existing project.

Some minor differences between the Minor Upgrade alternative and the Refurbished Project proposal are that the Refurbished Project proposal includes: (1) a flow continuation system, (2) minor expansion of the Plant 2 forebay to improve removal of suspended sediments for Plant 2, (3) leaving Unit 4 of Plant 1 in place for historic preservation values, and (4) retaining and refurbishing the existing foot bridge.

Although the Refurbished Project alternative is substantially similar to the Minor Upgrade alternative already addressed in the draft Environmental Impact Statement, we are providing an opportunity for additional interventions, and for entities to reconsider their terms, conditions, prescriptions and comments submitted previously with respect to this application. Comments and/or petitions for intervention will be due 30 days from the date of issuance of this notice with response comments due 45 days from the date of issuance.

A copy of the application and amendment are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 941 North Capitol Street NE., Room 3104, Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Puget Sound Power & Light Company, P.O. Box 97034, Bellevue, WA 98009–9734, or by calling (206) 462–3058. The applicant contact for this project is Ms. Virginia Howell.

Contact Ms. Kathleen Sherman at (202) 219–2834 for questions relating to this proceeding.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22425 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–430–000]**

## Southern Natural Gas Company; Notice of Take-or-Pay Flowthrough

September 5, 1995.

Take notice that on August 31, 1995, Southern Natural Gas Company (Southern) filed to flowthrough take-or-pay costs paid to Koch Gateway Pipeline Company (Koch) under the terms of Koch's Order No. 500 settlements approved by the Commission in Docket No. RP85–209 on August 4, 1994 (August 4, Order).

Southern states that these take-or-pay settlement costs represent the remaining costs associated with the buyout and buydown of producer contracts by Koch as well flowthrough of take-or-pay costs from Koch's upstream pipeline supplier, Sea Robin Pipeline Company (Sea Robin). Paragraph (6) of Article II of Southern's Stipulation authorizes Southern to flow through, on an as-billed basis, buyout and buydown costs incurred from Koch as well as costs flowed through by Koch from Sea Robin.

Southern is proposing to allocate and bill these costs to its customers in accordance with the methodology approved by the Commission in its August 4 Order, as clarified in its subsequent order of July 6, 1995 in Docket No. RP85–209. Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of October 1, 1995:

Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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 Southern's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22426 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP95–431–000]**

## Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

September 5, 1995.

Take notice that on August 31, 1995, Southern Natural Gas Company (Southern) set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts as well as sales function costs during the period May 1, 1995 through July 31, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of October 1, 1995.

Tariff Sheets Applicable to Contesting Parties:

Twenty-Second Revised Sheet No. 15
Twenty-Second Revised Sheet No. 17
Twelfth Revised Sheet No. 18
Fifteenth Revised Sheet No. 29
Fifteenth Revised Sheet No. 30
Fifteenth Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties:

Third Revised Sheet No. 15A
Third Revised Sheet No. 17A

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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 Southern's filing with the Commission are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22427 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TM96–1–115–001]**

## Sumas International Pipeline Inc.; Notice of Tariff Filing

September 5, 1995.

Take notice that on August 29, 1995, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with a proposed effective date of October 1, 1995:

Substitute Fifth Revised Sheet No. 4
First Revised Sheet Number 7
First Revised Sheet Number 8

SIPI states that the above tariff sheets reflect the new ACA unit surcharge rate of $.0023 per Mcf which is equivalent to $.0022 per MMBtu on SIPI's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211) All such protests should be filed on or before September 11, 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. 95–22428 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TM96–1–18–000]**

## Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Eleventh Revised Sheet No. 10
Eight Revised Sheet No. 11
Third Revised Sheet No. 11A
Thirteenth Revised Sheet No. 12
Fourth Revised Sheet No. 13

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 23 of the General Terms and Conditions of Texas Gas's FERC GAS Tariff, First Revised Volume No. 1, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0022/Mcf ($.0021/MMBtu converted) as set forth on Texas Gas's Annual Charges Bill for fiscal year 1995, to be effective October 1, 1995.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 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. 95–22429 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP95–721–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Application

September 5, 1995.

Take notice that on August 31, 1995, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–721–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon a certificated firm transportation service for Columbia Gas Transmission Corporation (Columbia Gas), effective January 31, 1994, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that, by order issued January 31, 1983, in Docket No. CP82–545–000, it was authorized to transport on a firm basis up to 9,000 dt equivalent of natural gas per day for Columbia Gas, and subsequently filed the related transportation agreement as its Rate Schedule X–244. Transco states that it receives the gas at a production platform in High Island Block A–471, offshore Texas, and delivers the gas at the interconnection between Transco and Transco-Columbia Gulf Transmission

Company's jointly owned High Island Block A–448 system, offshore Texas.

Transco states that Article II of the underlying transportation agreement provides that the agreement become effective August 5, 1982, and shall remain in force for a primary term of ten years from the date on initial delivery, February 1, 1983, and year to year thereafter unless and until terminated by either party giving prior written notice to the other party of not less than year, which termination may be effective at the end of the primary term or at the end of any year thereafter. Transco states that Columbia Gas provided written notice of termination to Transco by letter dated December 1, 1992, to be effective January 31, 1994. Additionally, Transco states that, pursuant to a stipulation between Transco and Columbia Gas dated June 20, 1994, and approved by the United States Bankruptcy Court for the District of Delaware by June 20, 1994, Transco and Columbia Gas agreed, *inter alia,* to terminate the agreement underlying Rate Schedule X–244.

Transco further states that it does not propose to abandon any facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 26, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22430 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No.: RP95–425–000]**

## Transwestern Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995 Transwestern Pipeline Company (Transwwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

114th Revised Sheet No. 5
19th Revised Sheet No. 5A
13th Revised Sheet No. 5A.01
11th Revised Sheet No. 5A.02
11th Revised Sheet No. 5A.03
Original Sheet No. 5B.01

Transwestern states that it is seeking to recover certain take-or-pay settlement, buy-out, buy-down, and contract reformation costs (''TCR II Costs'') paid by Transwestern. These costs qualify for recovery by Transwestern under Commission Order Nos. 500 and 528 as well as the terms and conditions of the Stipulation and Agreement (''Stipulation'') filed by Transwestern in Docket No. RP95–271–000 and approved by Commission order dated July 27, 1995.

In this filing, Transwestern is seeking recovery of $10,622,519.55 in TCR II costs and is revising certain tariff sheets and requesting authority to begin recovery of such amounts under the tariff sheets effective October 1, 1995.

Transwestern requested any waiver of any Commission Regulation and its tariff provisions as may be required to allow the tariff sheets referenced above to become effective on October 1, 1995.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to 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 NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22431 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–42–000]**

## Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

113th Revised Sheet No. 5
18th Revised Sheet No. 5A
10th Revised Sheet No. 5A.02
10th Revised Sheet No. 5A.03
16th Revised Sheet No. 5B

Transwestern states that the tariff sheets referenced above are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0022/dth as determined by the Commission reflects an decrease of $0.0001/dth from the currently effective ACA Surcharge of $0.0023/dth.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to 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 NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 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. 95–22432 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM96–1–30–000]**

## Trunkline Gas Company; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 13. Trunkline requests an effective date of October 1, 1995.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with the Commission's Order No. 472 and pursuant to Section 21 (Annual Charge Adjustment (ACA) Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline's current ACA Unit Surcharge of $0.0023 per Dt effective October 1, 1994 as approved by the Commission's Order dated September 30, 1994 in Docket No. TM95–1–30–000 changes to $0.0022 per Dt with the tracking of the ACA Unit Surcharge authorized for the fiscal year 1995.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheet and rates submitted herewith effective October 1, 1995.

Trunkline further states that copies of the filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 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. 95–22433 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER95–1382–000]**

## Utility-Trade Corp.; Notice of Issuance of Order

September 6, 1995.

On July 17, 1995, Utility-Trade Corp. (UTC) submitted for filing a rate schedule under which UTC will engage in wholesale electric power and energy transactions as a marketer. UTC also requested waiver of various Commission regulations. In particular, UTC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by UTC.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UTC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, UTC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UTC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22448 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5294–3]**

## Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of agency approval of an application for equipment certification.

**SUMMARY:** The Agency received an application dated October 24, 1994 from the Engelhard Corporation (Engelhard) with principal place of business at 101 Wood Avenue, Iselin, New Jersey for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401–85.1415. On March 6, 1995 EPA published notification that the application had been received and made the application available for public review and comment for a period of 45 days (60 FR 12185). EPA has completed its review of this application and the Director of the Manufacturers Operations Division has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment effective September 11, 1995.

The candidate equipment provides a reduction in emissions of particulate matter (PM) for Detroit Diesel Corporation 6V92TA MUI(mechanical unit injection) petroleum fueled diesel engines. The certification of this equipment is applicable under program 2 only. It does not apply for operators utilizing Program 1 as Engelhard specifically applied under Program 2 only and did not perform the additional testing required for Program 1 certification.

The Engelhard application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Docket items may be inspected from 8:00 a.m. until 4:00 p.m., Monday through Friday. As provided in 40 CFR

Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

**DATES:** The date of this notice, September 11, 1995, is the official certification date for this application. The equipment is immediately available for installation.

**FOR FURTHER INFORMATION CONTACT:** Anthony Erb, Technical Support Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 24, 1995 Engelhard applied for certification of a kit, for use on 2-cycle petroleum fueled diesel DDC 6V92TA MUI urban bus engines for the 1979 through 1989 model years, that includes a catalytic converter muffler (CCM) and incorporates a ceramic in-cylinder coating applied to the piston crowns, valve face and fire deck on the engine head. The application was submitted under EPA's Urban Bus/Retrofit program under Program 2 only.[1]

The CCM functions as a catalytic converter and a muffler. It takes the place of the original muffler in the engine exhaust system. Through testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, Engelhard documented that emissions of particulate matter (PM) were reduced to a level of 0.22 g/bhp-hr with the candidate equipment installed. Engelhard is certifying this equipment to a maximum PM emission level of 0.25g/bhp-hr.

TABLE A.—CERTIFICATION LEVELS

| Engine model | Model year | PM level with standard rebuild and addition of CCM and GPX coating | Code | Family designation |
|---|---|---|---|---|
| DDC 6V92TA MUI | 1979–1989 | 0.25 | All | All. |

Emission test results supplied by Engelhard in the application are shown in Table B. The test data show the reduction in PM. Hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen ($NO_X$) and smoke emissions were within the applicable emission standards with the CCM installed.

TABLE B. CERTIFICATION EMISSION TEST RESULTS (GM/BHP–HR)

| | Baseline engine before rebuild | Rebuilt engine with catalyst and GPX–4 coating |
|---|---|---|
| HC | 1.19 | 0.23 |
| CO | 2.53 | 0.46 |
| $NO_X$ | 9.55 | 5.53 |
| PM | 0.87 | 0.22 |
| Smoke Test: | | |
| Accel | ..... | 6.0% |
| Lug | ..... | 3.4% |
| Peak | ..... | 7.6% |

Urban bus operators who choose to comply with Program 2 and use the Engelhard equipment will use the PM emission value from Table A when calculating their average fleet PM level.

## II. Summary and Analysis of Comments

EPA received comments from one party on this Engelhard application during the comment period. The Greater Bridgeport Transit District stated that their experience using GPX–4 ceramic coatings since 1991 has been positive. The engines have gotten better fuel economy, emitted less smoke, and consumed less lubrication oil. A copy of the comments can be found in EPA Docket A–93–42.

## III. Certification Approval

The Agency has reviewed this application, along with comments received from interested parties, and finds that this equipment reduces particulate matter emissions without causing urban bus engines to fail to meet any applicable Federal emission requirements. Additionally, EPA finds that installation of this equipment will not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the engine manufacturer's emission related part. The application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 and 85.1415). Thus, the Agency hereby approves the certification of this equipment.

## IV. Operator Requirements and Responsibilities

For operators who have chosen to comply with Program 2, this equipment is immediately available for use and those who use this certified kit may claim the PM emissions reduction as stated in Table A when calculating their Fleet Level Attained.

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements beginning in January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 95–22491 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA promulgated the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses on April 23, 1993 (58 FR 21359). This final rule established the provisions for an urban bus retrofit/rebuild program as required by section 219(d) of the Clean Air Act Amendments (CAAA) of 1990.

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**[FRL–5294–8]**

## Ozone, Particulate Matter and Regional Haze Implementation Program Subcommittee

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

**ACTION:** Notice of public meeting.

**SUMMARY:** On November 8, 1990, the EPA gave notice of the establishment of a Clean Air Act Advisory Committee

(CAAAC) (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Today, EPA announces establishment of the Ozone, Particulate Matter (PM) and Regional Haze Implementation Programs Subcommittee (Subcommittee) under the CAAAC. The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a new regional haze program. These programs have an interrelationship in the atmospheric processes that form ozone and fine particulate matter and possess common sources of precursor emissions. Further, EPA recognizes the importance of considering these programs in an integrated manner if cost effective control strategies are to be developed to meet public health and welfare objectives. The EPA envisions an open process that will examine key aspects of the existing implementation programs to provide for more effective implementation of the potential new standards, as well as approaches that will more completely integrate broad regional and national control strategies with more localized efforts. The focus of the Subcommittee will be to assist EPA in developing implementation strategies, preparing supporting analyses, and identifying and resolving impediments to the adoption of the resulting programs.

**OPEN MEETING DATE:** Notice is hereby given that the Subcommittee will hold an open meeting on September 26, 1995 from 9 a.m. to 4 p.m. at the Sheraton Imperial, 4700 Emperor Boulevard, Morrisville, North Carolina 27560. Due to the size of the meeting room, seating is limited to approximately 150 observers and will be made available on a first come, first served basis. To assist EPA in planning the public meeting, persons interested in attending should register with EPA by contacting Ms. Cathy Ward at TRC Environmental Corporation at 919–419–7500 to give their name and address before September 19, 1995.

The public is invited to submit written views and recommendations on new integrated approaches for implementing these programs. Such comments should be submitted (in duplicate) to Docket A–95–38 by October 10, 1995.

**INSPECTION OF DOCUMENTS:** A transcript of the meeting as well as other relevant materials will be available for public inspection in EPA Air Docket No. A–95–38. The docket is open for public inspection and copying between 8:30 a.m. and 5:30 p.m., weekdays, at the Air and Radiation Docket and Information Center (6102), room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. John H. Haines, Designated Federal Officer for the Subcommittee, at 919–541–5533, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** The EPA is presently reviewing the NAAQS for ozone and particulate matter. In a related action, EPA is in the process of developing a regional haze program to address visibility impairment in Federal Class I areas. The EPA's schedule for ozone calls for proposal in mid-1996 and final action in mid-1997. The EPA is under a court-ordered schedule for particulate matter to announce a proposal decision by June 30, 1996, and to take final action by January 31, 1997. The development of a regional haze program is on a schedule similar to the particulate matter review.

Based on the assessment to date, a principle consideration would be to replace the existing 1-hour primary standard for ozone with a new 8-hour standard. Consideration is also given to replacing the existing 1-hour secondary standard for ozone with a new secondary standard with a more appropriate averaging period. While the review of the particulate matter NAAQS has not progressed as far as the ozone review, preliminary assessments of the available scientific information suggest that fine particles are more likely to be associated with reported health effects. In addition, fine particles are the major cause of visibility impairment. Therefore, consideration is being given to the establishment of a new 24-hour and annual fine particle NAAQS to replace the existing 24-hour PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) standard. The existing annual PM–10 standard is likely to be retained. To address the welfare effects of fine particles on visibility, consideration is being given to a regional haze program which allows for regional variations in implementation.

Given the likelihood that both the ozone and particulate matter NAAQS may be revised, as well as the development of a new regional haze program, EPA believes it is important at this time to obtain the advice and recommendations from a broad spectrum of the public on new approaches for implementing these programs. Toward this end, EPA has established the Subcommittee to be comprised of approximately 50 members from business and industry, environmental groups, State, local and tribal governments, as well as other Federal agencies. Members of the Subcommittee were selected on the basis of their professional qualifications and diversity of perspectives in order that EPA has the benefit of the full range of views in developing new approaches for implementing these programs.

Meetings will be held approximately four times a year, as determined by the chairperson. The meetings will be open to the public and will be announced in the Federal Register. The Designated Federal Officer will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Designated Federal Officer.

Dated: September 6, 1995.

**John S. Seitz,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 95–22609 Filed 9–8–95; 8:45 am]

**BILLING CODE 6560–50–M**

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**[FRL–5294–2]**

## Environmental Radiation Protection Standards for Yucca Mountain, NV

**AGENCY:** U.S. Environmental Protection Agency.

**ACTIONS:** Notice of Availability, Request for Comments, and Announcement of Public Meetings.

**SUMMARY:** As required under the Energy Policy Act of 1992 (Pub. L. 102–486), the National Academy of Sciences/National Research Council (NAS) has completed a study of the technical bases for environmental radiation protection standards for the potential repository for radioactive waste at Yucca Mountain, Nevada (hereafter referred to as the NAS Report). The Environmental Protection Agency (EPA) is announcing the availability of the NAS Report and requesting comments on its contents. Instructions for obtaining the NAS Report and submitting comments are given below.

EPA is also announcing public meetings to inform the public of the role which the Agency will play in setting standards for Yucca Mountain and to solicit initial comments and concerns.

**DATES:** Even though this is an informal comment process, comments will be of greatest value if received on or before October 26, 1995 at the address given below.

**ADDRESSES:** *To obtain the NAS Report.* The entire NAS Report may be purchased from the National Academy Press, 2101 Constitution Ave. NW., Box 285, Washington, DC 20055 or by calling 800–624–6242 or 202–334–3313. Also, the Agency will make photocopies of the Executive Summary available in response to written requests sent to NAS Report Executive Summary, Radioactive Waste Management Branch (6602J), Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460–0001 or by calling 202–233–9310 or 800–331–9477 and leaving your name and address. Finally, the text of the NAS Report will be available via computer on EPA's Technology Transfer Network; for access: call 919–541–5742 (modems up to 14,400 bps) or via Internet at TELNET ttnbbs.rtpnc.epa.gov.

A copy of the NAS Report is in both dockets which have been established for this rulemaking. One docket, designated Docket A–95–12, is located in Room 1500 (ground level inside of Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials. This other docket is in the Government Publications Department, Dickinson Library, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada.

*To send comments.* To comment upon the contents of the NAS Report, write to NAS Report Comments, Radioactive Waste Management Branch (6602J), Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460–0001.

**FOR FURTHER INFORMATION CONTACT:** Ray Clark, Radioactive Waste Management Branch (6602J), Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460–0001; telephone 202–233–9310.

**SUPPLEMENTARY INFORMATION:** The Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97–425) established the current national program for the disposal of spent nuclear fuel (SNF) and high-level radioactive waste (HLW). In 1985, the Agency established generic standards, i.e., for applicable activities in the U.S., for the management and disposal of SNF and HLW in 40 CFR part 191. (50 FR 38066). The NWPA was amended by the Nuclear Waste Policy Amendments Act of 1987 which did not affect EPA's authority or responsibility but did narrow the characterization of potential disposal sites for SNF and HLW to Yucca Mountain, Nevada.

In October 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA, Pub. L. 102–579) and the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486) were enacted. The WIPP LWA exempted the potential Yucca Mountain disposal system from coverage under 40 CFR part 191. However, the EnPA assigned the authority and responsibility to establish site-specific environmental radiation protection standards for Yucca Mountain. It also required EPA to contract with the NAS to provide findings and recommendations on the technical bases of the Yucca Mountain standards prior to writing those standards. The NAS study began in February 1993 and was presented to the Agency on August 1, 1995.

''(A) Whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

(B) Whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

(C) Whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.''

## Recommendations and Conclusions of the NAS

The EPA will now begin establishing site-specific standards for Yucca Mountain taking into account the recommendations and conclusions of the NAS. In the Executive Summary of their report, the NAS recommended:

(a) The use of a standard that sets a limit on the risk to individuals of adverse health effects from releases from the repository;

(b) That compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment;

(a) The use of a standard that sets a limit on the risk to individuals of adverse health effects from releases from the repository;

(b) That compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment;

(c) Against a risk-based calculation of the adverse effect of human intrusion into the repository;

(d) That the consequences of an intrusion be calculated to assess the resilience of the repository to human intrusion;

(e) That resolution of policy issues be done through a rulemaking process that allows opportunity for wide-ranging input from all interested parties;

(f) That the critical-group approach be used in the Yucca Mountain standards; and,

(g) That EPA require that the estimated risk calculated from the assumed intrusion scenario be no greater than the risk limit adopted for the undisturbed-repository case because a repository that is suitable for safe long-term disposal should be able to continue to provide acceptable waste isolation after some type of intrusion.

The NAS also reached several conclusions:

(a) An individual-risk standard would protect public health, given the particular characteristics of the site, provided that policy makers and the public are prepared to accept that very low radiation doses pose a negligibly small risk;

(b) The physical and geologic processes are sufficiently quantifiable and the related uncertainties sufficiently boundable that performance can be assessed over time frames during which the geologic system is relatively stable or varies in a boundable manner;

(c) It is not possible to predict, on the basis of scientific analyses, the societal factors for an exposure scenario. Specifying exposure scenarios therefore requires a policy decision that is appropriately made in a rulemaking process conducted by EPA;

(d) With respect to the second question of Section 801, it is not reasonable to assume that a system for post-closure oversight of the repository can be developed, based on active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered barriers or increasing the exposure of individual

members of the public to radiation beyond allowable limits;

(e) With respect to the third question in Section 801, it is not possible to make scientifically supportable predictions of the probability that a repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years; and,

(f) There is no scientific basis for incorporating the ALARA [as low as reasonably achievable] principle into the EPA standards or Nuclear Regulatory Commission licensing regulations for the repository.

### Request for Comments on the NAS Report

As the first step in the public process, EPA is requesting comments on the NAS Report. While comments will be accepted on any part of the report, the Agency has several questions upon which it is particularly requesting comments. First, did the report sufficiently answer the questions found in the Act? Second, was there sufficient rationale to support the findings and conclusions? Third, do provisions other than those found in the findings and conclusions need to be included in the EPA standards? Fourth, are any of the findings or conclusions which are inappropriate or inaccurate regarding Yucca Mountain? Fifth, would the cost of imposing the findings and recommendations be justifiable when compared with the benefits provided?

### Public Meetings

The second step in the standards-setting process will be to hold a series of public meetings. The purpose of these meetings is to inform the public of the role of the Environmental Protection Agency including the extent and limitations of its authority. They will also be used to receive early comments from and discuss issues with the public.

Public meetings will be held: (a) from 1:00–5:00 p.m. and 6:30–9:30 p.m. on September 20, 1995 in the Multi-Purpose Building, 821 East Farm Road in Amargosa Valley, Nevada (call Stan Sims at 702–727–7727 for directions); (b) from 1:00–5:00 p.m. and 6:30–9:30 p.m. on September 21, 1995 in Wright Hall, Room 103, University of Nevada-Las Vegas, 4505 Maryland Parkway in Las Vegas, Nevada (see the campus map on page 57 of the Las Vegas telephone directory for directions); and from 9:00 a.m.–noon and 1:00 p.m.–5:00 p.m. on September 27, 1995 in the National Gallery Ballroom, Radisson Barcelo Hotel, 2121 P St., NW, in Washington, DC (call 202–293–3100 for directions).

Dated: September 5, 1995.

**Mary Nichols,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 95–22355 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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**[OPPTS–00174A; FRL–4977–1]**

## Toxics Release Inventory Phase 3; Chemical Use; Notice of Public Meeting; Change of Meeting Date

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

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of August 22, 1995, EPA announced a 2–day public meeting to receive public comments on whether to expand the reporting requirements of the Toxics Release Inventory (TRI) to include chemical use data. This notice announces new dates for the meeting.

**DATES**: The location of the meeting has not changed (Waterside Towers, Conference Room, 907 6th St., SW., Washington, DC); however, the dates have been changed to October 18 and 19, 1995, at 9 a.m. The issues paper will be available October 4, 1995, by contacting EPA at the telephone number listed under FOR FURTHER INFORMATION CONTACT. In order to schedule speakers and accomodate attendees, please contact EPA by October 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** The Toxic Substances Control Act Hotline, Environmental Assistance Division, Office of Pollution Prevention and Toxics, 7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, e:mail: TSCA-Hotline@epamail.epa.gov. Attention: Administrative Record No. AR 128.

**SUPPLEMENTARY INFORMATION**: The meeting is intended to explore issues related to the possible collection of chemical use-related data, such as materials accounting, under the Emergency Planning and Community Right-to-Know Act or other appropriate Federal statutes. The purpose of the issues paper is to provide a focus for discussion at the meeting. Speakers are asked to bring a disk containing any written comments they may have.

### List of Subjects

Environmental protection, Community right-to-know.

Dated: September 5, 1995.

**Susan B. Hazen,**

*Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 95–22495 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–F

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**[OPPTS–44620; FRL–4976–1]**

## TSCA Chemical Testing; Receipt of Test Data

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on ethyl acetate (CAS No. 141–78–6) and diglycidyl ether of bisphenol A (CAS No. 1675–54–3) (DGEBPA), submitted pursuant to consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a). Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with section 4(d) of TSCA.

### I. Test Data Submissions

Test data for ethyl acetate were submitted by The Chemical Manufacturers Association Oxo Process Panel pursuant to a consent order at 40 CFR 799.5050. They were received by EPA on July 13, 1995. The submission includes a final report entitled ''A Ten-Day Vapor Inhalation Study in the Rat.'' Ethyl acetate is used as a solvent for lacquers and enamel coatings, as a solvent for inks, as a plastics solvent, and in chemical synthesis.

Test data for DGEBPA were submitted by The Society of the Plastics Industry Epoxy Resin Systems DGEBPA Task Force pursuant to a testing consent order at 40 CFR Part 799.5000. They were received on June 14, 1995. The submissions include a final report entitled ''DGEBPA: Two Week Dermal Irritation Probe Study in Fischer 344 Rats'' and a final report entitled

''DGEBPA: Two Week Dermal Irritation Study in Male B6C3F1 Mice.'' DEGEBPA is used as a principal component in epoxy resins which are used for sealing and encapsulating, for making castings and pottings, for formulating light-weight foams, and as binders in laminates of fiber, glass, paper, wood sheets, and polyester cloth.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

## II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44620). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

## List of Subjects

Environmental protection, Test data.

Dated: August 30, 1995.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 95–22496 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–F

# FEDERAL LABOR RELATIONS AUTHORITY

## Federal Service Impasses Panel

## Information Collection Under OMB Review

**SUMMARY:** The Federal Service Impasses Panel submits the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** September 11, 1995.

The customer survey document lists the following information: (1) Identification of respondent as either an agency or union representative; (2) respondent's organizational level of representation and years of experience in Federal sector labor-management relations; (3) number of cases taken before the Panel in 1994 and 1995; (4) number of bargaining units and employees represented or serviced; (5) time spent by an agency representative on labor-management matters; (6) respondent's experience with the Panel's regulations and views over various aspects of the regulations; (7) identification of the method(s) used to file request(s) for assistance; (8) explanation for not using the Panel's request for assistance form; (9) suggestions for improving the form; (10) views on various aspects of the Panel's letter acknowledging receipt of the request for assistance; (11) views on various aspects of the initial investigation process and on the manner in which the Panel staff representative(s) conducted the investigation(s); (12) if applicable, views on various aspects of the Panel's decision to decline to assert jurisdiction and explanation of the impact of that decision on the parties; (13) if applicable, views on various aspects of the Panel's decision to assert jurisdiction in cases where an obligation-to-bargain issue was raised; (14) views on various aspects of each of seven specified procedures with which the respondent may have had experience; (15) comments on how the procedures worked; (16) views on holding a face-to-face procedure at the Panel's office in Washington, D.C., rather than at the site of the impasse; (17) if applicable, views on various aspects of the Panel's *Decisions and Orders* and arbitration awards; (18) indication of whether the parties did something other than what the Panel ordered; (19) comments on the differences between mediation-arbitration by a Panel representative and private mediation-arbitration where the respondent has participated in both procedures; and (20) comments to the Chair. The letter accompanying the survey identifies (a) the group of individuals asked to respond to the survey (users of the Panel's services in FY 94 and 95); (b) the time estimated for completing and returning the survey (25 minutes or less and 14 days, respectively); (c) the purpose of the survey (evaluation of the Panel's services); and (d) how respondents can obtain a copy of the survey report.

Additional information or comments: Copies of the proposed survey and supporting documents may be obtained from Linda A. Lafferty, Executive Director, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001, (202) 482–6670.

**Linda A. Lafferty,**

*Executive Director.*

[FR Doc. 95–22500 Filed 9–8–95; 8:45 am]

BILLING CODE 6727–01–M

# FEDERAL RESERVE SYSTEM

## First United Bancshares, 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 September 25, 1995.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. First United Bancshares, Inc.*, El Dorado, Arkansas; to engage *de novo* through its subsidiary, First United Trust Company, N.A., El Dorado, Arkansas, in trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y, and in providing portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 5, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-22441 Filed 9-8-95; 8:45 am]

BILLING CODE 6210-01-F

## Malvern Bancorporation, 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 October 5, 1995.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Malvern Bancorporation*, Malvern, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Malvern, Malvern, Pennsylvania.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Alabama National Bancorporation*, Shoal Creek, Alabama; to merge with National Commerce Corporation, Birmingham, Alabama, and thereby indirectly acquire Commerce Bankshares, Inc., Birmingham, Alabama, and National Bank of Commerce, Birmingham, Alabama.

Board of Governors of the Federal Reserve System, September 5, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-22442 Filed 9-8-95; 8:45 am]

BILLING CODE 6210-01-F

## State Street Boston Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-20914) published on page 43800 of the issue for Wednesday, August 23, 1995.

Under the Federal Reserve Bank of Boston heading, the entry for State Street Boston Corporation, Boston, Massachusetts, is revised to read as follows:

*1. State Street Boston Corporation*, Boston, Massachusetts; to establish, through its subsidiary, Boston Financial Data Services, Inc., Quincy, Massachusetts, a *de novo* joint venture, BancBoston State Street Investor Services, L.P., Canton, Massachusetts, with The First National Bank of Boston, N.A., Boston, Massachusetts, as co-venturer, and thereby perform functions and activities that may be performed by a trust company and provide data processing and data transmission services and activities incidental thereto, pursuant to § 225.25(b)(3) and (b)(7) of the Board's Regulation Y. The services provided by the joint venture may include the processing of creditor claims in bankruptcy proceedings or plaintiff claims in class action legal proceedings, including processing claim information received from creditors and plaintiffs, creating a database regarding creditors and plaintiffs, responding to inquiries from creditors and plaintiffs, and printing and remitting payments to creditors and plaintiffs. Boston Financial Data Services, Inc., is equally owned by State Street Boston Corporation and DST Systems, Inc.

Comments on this application must be received by September 18, 1995.

Board of Governors of the Federal Reserve System, September 6, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-22574 Filed 9-8-95; 8:45 am]

BILLING CODE 6210-01-F

# GOVERNMENT PRINTING OFFICE

## Public Meeting for Federal, State and Local Agencies, and Others Interested in A Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access,* provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held Thursday, October 19, 9 a.m.–10:30 a.m. and 11 a.m.–12:30 p.m. at the Johnson County Library, 9875 West 87 St., Overland Park, Kansas 66212. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at john@eids05.eids.gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262 . Seating reservations will be accepted through Friday, October 13, 1995.

Dated: August 23, 1995.

**Michael F. DiMario,**

*Public Printer.*

[FR Doc. 95–22243 Filed 9–8–95; 8:45 am]

BILLING CODE 1505–02–F

## Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40). The demonstration will be held Friday, October 6, 8:30 A.M.–10 A.M. and 10:30 a.m.–12: p.m. at the Phoenix Center, 2701 South Minnesota Avenue, Sioux Falls, South Dakota 57105. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at john@eids05.eids.gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262 . Seating reservations will be accepted through Monday, October 2, 1995.

Dated: August 23, 1995.

**Michael F. DiMario,**

*Public Printer.*

[FR Doc. 95–22244 Filed 9–8–95; 8:45 am]

BILLING CODE 1505–02–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Public Health (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–7100.

1. Interdisciplinary Generalist Curriculum (IGC) Project: External Evaluation—New—The main focus of the IGC project deals with the medical faculty and curriculum by requiring demonstration schools to develop collaborative, clinically-oriented teaching during the first two years of medical school among the generalist faculty, require primary care, community-based preceptorships for first and second year medical students, and expose students to 150 hours of curriculum time in the preclinical years (half of which must be devoted to direct supervised patient care experiences; schools funded for the IGC will implement their own curricula which adhere to these guidelines. Two mail surveys will be conducted for the evaluation of the Interdisciplinary Generalist Curriculum Project; a longitudinal survey of faculty at the IGC demonstration schools on attitudes, beliefs and observations about the IGC innovations, and a survey of deans at medical schools and colleges of osteopathic medicine on the implementation of similar curriculum innovations.

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hour) |
|---|---|---|---|
| Faculty Survey | 1552 | 1 | .25 |
| Survey of Deans | 153 | 1 | .5 |
| Estimated Total Annual Burden: 465 hours. | | | |

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget. New Executive Office Building, Room 10235, Washington, DC 20503.

**James Scanlon,**

*Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.*

[FR Doc. 95–22377 Filed 9–8–95; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. FR–3932–D–01]**

### Redelegation of Authority

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of redelegation of authority.

**SUMMARY:** In this notice, the Assistant Secretary for Public and Indian Housing redelegates to certain HUD officials in field offices (also referred to as State and Area offices) the power and authority to order Limited Denials of Participation (LDPs). A Limited Denial of Participation is a sanction which may be imposed against contractors and participants in HUD programs under certain circumstances. The Assistant Secretary for Public and Indian Housing redelegates authority to issue LDPs, as specified, to the Directors and Deputy Directors of Public Housing and to the Administrators of Field Offices of Native American Programs.

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

**FOR FURTHER INFORMATION CONTACT:** Casimir Bonkowski, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4228, Washington, D.C. 20410, (202) 708–0440; or Dominic Nessi, Director, Office of Native American Programs, 451 7th Street, S.W., Room B–133, Washington, DC 20410, (202) 755–0032. A telecommunications device for the hearing-impaired is available at 202–

708–0850. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The HUD regulations at 24 CFR 24.700 provide that officials designated by the Secretary, including the Assistant Secretary for Public and Indian Housing, are authorized to order Limited Denials of Participation (LDPs) and to redelegate this authority. In the present redelegation, the Assistant Secretary for Public and Indian Housing redelegates to the Director and the Deputy Director of Public Housing for each HUD field office (also referred to as a State or Area office) and to the Administrator of each Field Office of Native American Programs, the authority to order Limited Denials of Participation relating to programs under the jurisdiction of the Assistant Secretary for Public and Indian Housing.

Accordingly, the Assistant Secretary for Public and Indian Housing redelegates authority as follows:

## Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates the power and authority to order Limited Denials of Participation pursuant to 24 CFR 24.700, whenever the program under which the cause for LDP arose is a program under the jurisdiction of the Assistant Secretary for Public and Indian Housing, to the Director and the Deputy Director of Public Housing for each HUD field office (also referred to as a State or Area office) and to the Administrator of each Field Office of Native American Programs.

## Section B. No Authority to Further Redelegate

The authority granted in Section A, above, may not be further redelegated pursuant to this redelegation.

**Authority:** Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: September 1, 1995.

**Michael B. Janis,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 95–22383 Filed 9–8–95; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–016–1220–00]**

## Temporary Travel Restrictions for the Serviceberry Mountain Area of Colorado

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Order of Area, Road and Trail Use Restriction.

**SUMMARY:** This order closes certain public lands to motorized vehicle use (except snowmobiles) in the Serviceberry Mountain area of the Little Snake Resource Area, Craig district. This order modifies the ''unclassified'' Off-Highway Vehicle (OHV) designation (3,108 acres) on public lands newly acquired through the Bridges Land Exchange (COC54336). It also modifies the existing ''open'' (3,246 acres) and ''limited'' (1440 acres) OHV designations on public lands adjoining the public lands acquired through the exchange. This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while the off-highway vehicle (OHV) management portion of the Little Snake Resource Area Resource Management Plan is reviewed and modified as needed to address public issues, concerns and needs, as well as resource uses, development, impacts and protection.

**This Order Affects All Public Lands in the Serviceberry Mountain Area of Moffat County Within**

T. 12 N,, R. 90 W., 6th PM
- Sec. 21, S. ½ S. ½ (south of the fence line)
- Sec. 28
- Sec. 29
- Sec. 31
- Sec. 32
- Sec. 33

T. 11 N,, R. 90 W., 6th PM
- Sec. 5
- Sec. 6
- Sec. 7
- Sec. 8
- Sec. 17
- Sec. 18
- Sec. 19
- Sec. 20
- Sec. 21
- Sec. 29
- Sec. 30

**EFFECTIVE DATES:** This restriction order shall be effective September 14, 1995, and shall remain in effect until rescinded or modified by the Authorized Officer.

**SUPPLEMENTARY INFORMATION:** Current OHV use designations for public lands in the Serviceberry Mountain area, allow motorized vehicle use on and off roads and trails year round or limit motorized vehicle use to all-terrain vehicles and snowmobiles. State and local agencies and neighboring landowners expressed concerns that recent easements and acquisitions would open public lands in the Serviceberry Mountain area to motorized traffic and cause unacceptable impacts to natural resources, especially wildlife and soils.

In addition, consistent motor vehicle limitations are needed throughout the adjoining public lands in the Serviceberry Mountain area to avoid public confusion. The affected public lands includes identified soil erosion hazards and important high quality big game habitat.

Given due consideration of the concerns expressed by the public and potential impacts of unrestricted motorized vehicle use, a modification of existing OHV use designations is necessary to adequately protect natural resources on public land, minimize conflicts with other uses, prevent trespass problems, and ensure public safety until these issues can be more thoroughly addressed in activity planning for these areas. Provisions will be made to allow for necessary motorized travel on the public lands for administrative purposes and to facilitate non-motorized public access to the public lands.

The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information, including detailed maps of the restricted area, roads and trails will be available at the access sites and in the Resource Area Office and District Office at the addresses shown below.

Persons who are exempt from the restrictions contained in this notice include:

1. Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities.
2. BLM employees engaged in official duties.
3. Persons or agencies holding a valid permit or right-of-way on or across the restricted public land for access to private land, for purposes related to the access of private land only.
4. Persons or agencies holding a special use permit or right-of-way for access to maintenance and operation of authorized facilities within the restricted area, for purposes related to access for maintenance and operation of authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right-of-way.
5. Grazing permittees authorized during the permitted grazing season for

grazing related purposes provided such motorized use is limited to existing roads and trails and subject to any additional conditions in the grazing permit. Any motorized use before or after the permitted grazing season necessary for maintenance and operation of range facilities shall require advance approval by the authorized officer specifically authorizing such use and subject to whatever restrictions are deemed necessary.

*Penalties:* Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

**FOR FURTHER INFORMATION CONTACT:**

John Husband, Area Manager, Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado 81625, (970) 824–4441

Mark Morse, District Manager, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, (970) 824–8261

**Carroll M. Levitt,**

*Acting District Manager.*

[FR Doc. 95–22299 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–JB–M

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**[CA–064–05–1430–00, CARI 1366]**

## Notice of Realty Action; Transfer of Public Lands, Kern County, California

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of Realty Action; Recreation and Public Purpose Act Transfer Kern County, California.

**SUMMARY:** The following described land has been examined and found suitable for classification for transfer to Kern County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

**Mount Diablo Meridian**

T.27S., R.39E.,
Section 12: NW¼SW¼, W½NW¼.

Containing 120 acres of public land, more or less.

**SUPPLEMENTARY INFORMATION:** The County of Kern has applied to transfer the site currently leased for the Ridgecrest Landfill. The lands are not needed for Federal purposes and conveyance would be consistent with the 1980 California Desert Conservation Area Plan, as amended. The lease and conveyance of the land would be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior.

2. A right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation of all minerals to the United States, and the right to prospect, mine and remove the minerals.

4. A declaratory covenant stating that the site has been used for disposal of solid waste.

Publication of this Notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, but not the mineral leasing laws or the Recreation and Public Purpose Act. Detailed information concerning this action is available for review at the California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. For a period of 45 days after publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective November 13, 1995.

Dated: August 24, 1995.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 95–22261 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–40–P

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**[NV–930–4210–05; N–59989]**

## Notice of Realty Action: Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management.

**ACTION:** Recreation and public purpose conveyance.

**SUMMARY:** The following described public land near Laughlin, Clark County, Nevada has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for a municipal solid waste landfill.

**Mount Diablo Meridian, Nevada**

T. 32 S., R. 66 E.,
Sec. 8: NE¼NE¼;
Sec. 9: NW¼NW¼.

Containing 80 acres, more or less.

The land is not required for any federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

By no later than October 26, 1995, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

**CLASSIFICATION COMMENTS:** Interested parties may submit comments involving the suitability of the land for a municipal solid waste landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**APPLICATION COMMENTS:** Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal solid waste landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective November 13, 1995. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: August 30, 1995.

**Michael F. Dwyer,**

*District Manager, Las Vegas, NV.*

[FR Doc. 95–22379 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–HC–P

## Bureau of Reclamation

### Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of draft decision of evaluation of water conservation plans.

**SUMMARY:** To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

**DATES:** All public comments must be received by Reclamation by October 11, 1995.

**ADDRESSES:** Please mail comments to the address provided below.

**FOR FURTHER INFORMATION CONTACT:** Debra Goodman, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Debra Goodman or telephone at (916) 979–2397.

**SUPPLEMENTARY INFORMATION:** Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), ''The Secretary (of the Interior) shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets, and projected results.
7. Review, evaluate, and adopt the water conservation plan.
8. Implement, monitor, and update the water conservation plan.

The MP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Clear Creek Community Services District
- Fresno Irrigation District
- Orland-Artois Water District
- Stockton East Water District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Goodman to find the office nearest you.

Dated: August 28, 1995.

**Franklin E. Dimick,**

*Assistant Regional Director.*

[FR Doc. 95–22300 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–94–M

### Recision of the Record of Decision on the Final Environmental Impact Statement for the Narrows Project, Small Reclamation Loan Program, Utah

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a final environmental impact statement (EIS) on the proposed Narrows Project. The EIS describes and presents the environmental effects of three alternatives, including no action, for a multiple purpose water development project that would provide water for irrigation and municipal use in north Sanpete County, Utah. This notice is for the purpose of rescinding the Record of Decision for this FEIS.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Calhoun, Regional Director, Upper Colorado Region, Bureau of Reclamation, UC–100, Mail Room 6107, 125 South State Street, Salt Lake City, Utah 84138–1102; Telephone: (801) 524–5592.

**SUPPLEMENTARY INFORMATION:** On July 28, 1995, the Carbon Water Committee, *et. al.*, filed an action in the United States District Court against Reclamation for declaratory judgment and injunctive relief. The primary assertion in the complaint is that Reclamation failed to comply with NEPA, in the preparation of the final environmental impact statement (EIS) for the proposed Narrows Project.

The complaint alleges a conflict of interest on the part of the contractor that Sanpete Water Conservancy District hired to prepare the EIS and the Loan application. By this recision action, Reclamation intends to initiate a close review of the NEPA document, specifically in light of a possible conflict of interest, to determine whether the contractor accurately portrayed the environmental consequences of the proposed action, both for the public and the decision makers.

Any further action under NEPA or processing of the loan application will await the outcome of this review.

Dated: September 6, 1995.

**Charles A. Calhoun,**

*Regional Director.*

[FR Doc. 95–22498 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–94–M

## National Park Service

### Notice of Inventory Completion of Native American Human Remains in the Possession of the Utah Field House of Natural History State Park, Vernal, UT

**AGENCY:** National Park Service, Interior

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains in the possession of the Utah Field House of Natural History State Park, Vernal UT.

In May, 1953, a Ms. Wadel (or Wadell) donated a single cranium to the Utah Field House of Natural History State Park. Writing on the occipital vault reads: ''skull of Sioux Chief Gall. Age 99 years and 7 months. Died 1879 at Poplar, Montana, then the Ft. Peck Military Post. He surrendered to General Miles.''

A detailed inventory and assessment of this human cranium has been made by Utah Field House professional curatorial staff and specialists in physical anthropology, forensic anthropology, and prehistoric archaeology in consultation with the Standing Rock Sioux Tribal Council. Osteometric and forensic analyses by Dr. George Gill and Dr. Michael Charney established that the cranium is siouan in configuration. Many of the details written on the skull are at variance with generally acknowledged dates and locations of Chief Gall's life. However, a photographic superimposition of the skull with known photographs of Hunkpapa Chief Gall reveals a striking similarity in form.

Contact with the Standing Rock Sioux Tribal Council and the family of Gall's descendants was initiated in June 1991. On October 4, 1991, a grave located in the St. Elizabeth Episcopal Cemetery, on the Standing Rock Sioux Tribe Reservation and said to be the burial site of Chief Gall was exhumed. Family members, a mortician, a doctor, and the South Dakota State Anthropologist, witnessed the excavation. The grave appeared to have not been previously disturbed. A shattered cranium in the grave yielded no corroborating measurements. The lineal descendants of Chief Gall are satisfied that the remains in the grave are of their ancestor.

The Standing Rock Tribal Council acknowledges the lineal descendants decision on the identity of the cranium. Following the decision by Gall's lineal decendants, broader consultation was initiated with the Fort Belknap Community Council, the Prairie Island Community Council, the Shakopee Sioux Community Council, the Upper Sioux Board of Trustees, the Lower Sioux Indian Community Council, the Flandreau Santee Sioux Executive Committee, the Santee Sioux Tribal Council, the Sisseton-Wahpeton Sioux Tribal Council, the Lower Brule Sioux Tribal Council, the Rosebud Sioux Tribal Council, the Cheyenne River Sioux Tribal Council, the Oglala Sioux Tribe, the Devils Lake Sioux Tribe, the Fort Peck Tribal Executive Board, the Crow Creek Sioux Tribal Council, and the Yankton Sioux Tribal Business and Claims.

Based on the above mentioned information, officials of the Utah Field House of Natural History State Park have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between this cranium and the Standing Rock Tribe.

This notice has been sent to lineal descendants of Chief Gall and to officials of the Standing Rock Sioux Tribal Council, the Fort Belknap Community Council, the Prairie Island Community Council, the Shakopee Sioux Community Council, the Upper Sioux Board of Trustees, the Lower Sioux Indian Community Council, the Flandreau Santee Sioux Executive Committee, the Santee Sioux Tribal Council, the Sisseton-Wahpeton Sioux Tribal Council, the Lower Brule Sioux Tribal Council, the Rosebud Sioux Tribal Council, the Cheyenne River Sioux Tribal Council, the Oglala Sioux Tribe, the Devils Lake Sioux Tribe, the Fort Peck Tribal Executive Board, the Crow Creek Sioux Tribal Council, and the Yankton Sioux Tribal Business and Claims Committee. Individuals or representatives of any other indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Sue Ann Bilbey, Curator, Utah Field House of Natural History State Park, 235 East Main, Vernal UT 84078, telephone (801)789–3799 on or before [*thirty days after publication of this notice in the* **Federal Register**]. Repatriation of the cranium to the Standing Rock Sioux Tribe may begin after that date if no additional claimants come forward.

Dated: September 1, 1995

**Francis P. McManamon**

*Departmental Consulting Archeologist*

*Chief, Archeological Assistance Division*

[FR Doc. 95–22375; Filed 9–8–95; 8:45 am]

BILLING CODE 4310–70–F

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

## Agency for International Development

### Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Infrastructure Leasing & Financial Services Limited, Bombay, Indian, (''Borrower'') as part of USAID's development assistant program. The proceeds of these loans will be used to finance a prototype program designed to demonstrate the feasibility of private sector provision of infrastructure in India for the benefit of low income families. At this time, the Borrower plans to request bids from eligible lenders for a loan of $25.0 Million U.S. Dollars (US$25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

*Infrastructure Leasing & Financial Service Limited, India*

Project No.: 386–HG–IV
Housing Guaranty Loan Nos.: 386–HG–015–AO1, 386–HG–016–AO1
Amount: US$25,000,000

Attention:

(1) Mr. Hari Shankaran, Vice President, Infrastructure Leasing & Financial Services Ltd., India Habitat Centre, 4th Floor, East Court, Zone VI, Lodhi Road, New Delhi 110 003, India; Telefax No.: 011–(91–11) 463–6651 (preferred communication); Telephone Nos.: 011–(91–11) 463–6637, 463–6641, 463–6642

(2) Mr. Ravi Parthasarathy, Managing Director, Infrastructure Leasing and Financial Services Ltd., Mahindra Towers, 4th Floor, Road No. 13, Worli, Bombay 400 018; Telefax No.: 011–(91–22) 493–0080 (preferred communication); Telephone Nos.: 011–(91–22) 493–5190, 496–4353, 493–5127

Interested lenders should contact the Borrower and USAID immediately upon receipt of this Notice and indicate their interest in bidding on the proposed financing. Those lenders expressing interest will be included in a short list maintained by USAID for the purpose of facilitating an accelerated auction procedure as and when the actual bid date is set. It is anticipated that the bidding will occur sometime in mid to late September, 1995. As soon as the bid date is established, and in lieu of another public notice, a formal Notice of

Investment Opportunity will be provided directly to those firms appearing on the short list. The time between the actual receipt of the Notice of Investment Opportunity announcing the bid date, and the due date for bids, may be as little as 24 hours.

Lenders seeking to be included in the short list should submit their name, address and telefax number to: Mr. Charles Billand, Assistant Director, Mr. Peter Pirnie, Financial Advisor, U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, DC 20523–1822; Telex No.: 892703 AID WSA; Telefax Nos.: 703/875–4384 or 875–4639 (preferred communication); Telephone Nos.: 703/875–4300 or 875–4510.

The Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25.0 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate*: Alternatives of *fixed rate*, and *variable rate* are requested.

(a) *Fixed Interest Rate*: If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6⅞% U.S. Treasury Bond due August 15, 2025. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate*: To be based on the six-month British Bankers Association LIBOR, or the yield (B.E.Y.) of the 26 week U.S. Treasury Bill, preferably with terms relating to the Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment*:

(a) Offers should include an option for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and/or services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Closing Date*: As early as practicable with best efforts to close in 30 days, but not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower. The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Michael J. Lippe, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, DC 20523–1822; Fax Nos: 703/875–4384 or 875–4639; Telephone: 703/875–4300.

Dated: September 6, 1995.

**Michael G. Kitay,**

*Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.*

[FR Doc. 95–22557 Filed 9–8–95; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 95–31]**

### Charles L. Novosad, Jr., M.D.; Revocation of Registration

On March 14, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles L. Novosad, Jr., M.D. (Respondent), of Pojoaque, New Mexico. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AN5283697, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of New Mexico.

Respondent filed a request for a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. On May 2, 1995, the Government filed a motion for summary disposition, which was accompanied by a Decision and Order of the New Mexico Board of Pharmacy dated September 15, 1994. The Board of Pharmacy ordered the revocation of Respondent's state registration to handle controlled substances based upon the May 20, 1994, revocation of his state medical license. As a result, the Government contended that Respondent is not authorized to handle controlled substances in the State of New Mexico.

On May 9, 1995, the Respondent filed a response to the Government's motion. In his response, Respondent argued in part, that due process required a hearing in this matter.

On May 10, 1995, in his opinion and recommended decision, the administrative law judge found that Respondent lacks authorization to handle controlled substances in the State of New Mexico. The administrative law judge therefore granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked.

On June 5, 1995, the Respondent filed a letter with the administrative law judge requesting that the latter stay any dismissal of his DEA registration without a hearing. On June 6, 1995, the administrative law judge issued an order in which he interpreted the Respondent's letter as a motion for reconsideration of his ruling on the Government's motion for summary disposition. The administrative law judge found that Respondent failed to provide any new information regarding the revocation of his state medical license, and accordingly, denied Respondent's motion for reconsideration.

On June 12, 1995, Respondent filed exceptions to the administrative law judge's opinion and recommended ruling. The Respondent presented arguments pertaining to actions taken by the New Mexico Board of Medical Examiners and the New Mexico Board of Pharmacy. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.,* 57 FR 59847 (1992); *Elliott Monroe, M.D.,* 57 FR 23246 (1992); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

The administrative law judge properly granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *Phillip E. Kirk, M.D.,* 48 FR 32887 (1983), aff'd sub nom *Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, N.D.,* 43 FR 11873 (1978); see also, *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines and Smelting Co., Ltd.,* 455 F.2d 432, 453 (9th Cir. 1971).

In his exceptions to the opinion and recommended decision of the administrative law judge, the Respondent argued, *inter alia,* that actions taken by the New Mexico Board of Medical Examiners and the New Mexico Board of Pharmacy, which resulted in the revocation of his state license to handle controlled substances, were improper. However, Respondent presented no evidence to contradict the fact that he is currently without authorization to handle controlled substances in the State of New Mexico.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AN5283697, previously issued to Charles L. Novosad, Jr., M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective October 11, 1995.

Dated: September 5, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

[FR Doc. 95–22400 Filed 9–8–95; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–31,345]**

### Adams-Millis, High Point, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 1995 in response to a worker petition which was filed on August 9, 1995 on behalf of workers at Adams-Millis, High Point, North Carolina (a division of the Sara Lee Corporation).

An active certification covering the petitioning group of workers remains in effect (TA–W–30,083, Adams-Millis, High Point, North Carolina, certified August 29, 1994, impact date of June 29, 1993 and an expiration date of August 29, 1996). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of August, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22472 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–30,647]**

### Amerada Hess Corporation Headquartered in Houston, TX and Operating at Various Locations in the Following States; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on March 21, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on March 31, 1995 (60 FR 16667).

At the request of the company, the Department reviewed the certification for the subject firm. New findings show that worker separations have occurred at Amerada Hess locations in New Mexico. The Department is again amending the certification to cover these workers.

The intent of the Department's certification is to include all workers of Amerada Hess adversely affected by increased imports.

The amended notice applicable to TA–W–30,647 is hereby issued as follows:

''All workers of Amerada Hess Corporation, headquartered in Houston, Texas (TA–W–30,647) and operating at various locations in the following cited States who became totally or partially separated from employment on or after January 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–30,647A Oklahoma
TA–W–30,647B Louisiana
TA–W–30,647C North Dakota
TA–W–30,647D Texas (except Houston)
TA–W–30,647E New Mexico''

Signed at Washington, DC this 29th day of August 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22473 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–30,353; TA–W–30,353A]**

### E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging Rochester, NY and Field Offices Located in Florida; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 10, 1994, applicable to all workers at E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging located in Rochester, New York. The notice was published in the **Federal Register** on January 3, 1995 (60 FR 14).

At the request of a petitioner, the Department reviewed the certification for the subject firm. The findings show that support staff (sales, service and administrative) of the subject firm located in Florida should have been included in the certification.

The intent of the Department's certification is to include all workers of Du Pont Industrial Imaging adversely affected by imports.

The amended notice applicable to TA–W–30,353 is hereby issued as follows:

''All workers of E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging, Rochester, New York and support staff

operating in field offices in the State of Florida engaged in employment related to the production of NDT X-ray films who became totally or partially separated from employment on or after July 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 25th day of August 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22474 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–30,985; FHF Apparel, Miami, FL**

**TA–W–30,985A; 500 Fashion Group, Northampton, PA**

**TA–W–30,985B; 500 Fashion Group, Whitehall, PA**

**TA–W–30,985C; 500 Fashion Group, Philadelphia, PA]**

## Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 9, 1995, applicable to all workers of FHF Apparel, Miami, Florida. The notice was published in the **Federal Register** on June 27, 1995 (60 FR 33235). The certification was amended on August 1, 1995, to include the parent company, Fashion 500 Group located in Northampton, Pennsylvania. The notice will soon be published in the **Federal Register.**

The Department reviewed the subject certification, and is again amending the certification to cover the workers at the Fashion 500 Group locations in Whitehall and Philadelphia, Pennsylvania. The workers produce men's suits and sportscoats.

The intent of the Department's certification is to include all workers of FHF Apparel and the 500 Fashion Group who were adversely affected by imports.

The amended notice applicable to TA–W–30,985 is hereby issued as follows:

All workers of FHF Apparel, Miami, Florida (TA–W–30,985), and the 500 Fashion Group, Northampton, Pennsylvania (TA–W–30,985A), Whitehall, Pennsylvania (TA–W–30,985B), and Philadelphia, Pennsylvania (TA–W–30,985C) who became totally or partially separated from employment on or after April 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 29th day of August 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22475 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

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**[TA-W–31,329]**

## H.L. Brown, Jr., Midland, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 14, 1995 in response to a worker petition which was filed on August 14, 1995 on behalf of workers at H.L. Brown, Jr., Midland, Texas.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of August, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22476 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–31,102]**

## Rockwell Graphics Systems of Rockwell, Reading, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

On July 31, 1995, the union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on July 25, 1995 and published in the **Federal Register** on August 16, 1995 (60 FR 42589).

The union claims that the Department's survey of Rockwell Graphics Systems' customer base was inadequate, and recent competitive bids lost to foreign firms caused layoffs at the subject facility.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC. this 25th day of August, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22477 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–31,102]**

## Rockwell Graphics Systems of Rockwell Reading, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated July 31, 1995, the union requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 25, 1995 and published in the **Federal Register** on August 16, 1995 (60 FR 42589).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers Manufactured commercial printing presses.

The Department's denial was based on the fact that the ''contributed importantly'' test of the Group Eligibility Requirements of Trade Act was not met.

The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey revealed that none of the respondents increased their purchases of imports while decreasing their purchases from Rockwell Graphics Systems during the relevant period.

District 10 of the United Steelworkers of America claim that recent competitive bids were lost to foreign firms, causing substantial loss of jobs at the Rockwell Graphics Systems Reading, Pennsylvania location.

Investigation findings show that the Department surveyed the major declining customers of Rockwell Graphics Systems at Reading. Further findings show that Rockwell Graphics at

Reading did not participate in competitive bids during the relevant time period of the investigation.

## Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 25th day of August 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22478 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below not later than September 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of August, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

## Appendix

PETITIONS INSTITUTED ON 08/28/95

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 31,368 .. | Roxanne Swimsuits/Art San (ILGWU) | Neptune, NJ | 8/17/95 | Women's Swimwear. |
| 31,369 .. | Neptune Swimsuits Co (Wkrs) | Neptune, NJ | 8/16/95 | Warehouse-Swimwear. |
| 31,370 .. | Jonbill, Inc. (Comp) | Danville, VA | 8/15/95 | Jeans, Men's Ladies' & Children's. |
| 31,371 .. | Gaylord Container (Wkrs) | Weslaco, TX | 8/17/95 | Cardboard Boxes. |
| 31,372 .. | J.P. Emco (Comp) | Ada, OK | 8/16/95 | Auto & Truck Body Trim Parts. |
| 31,373 .. | IBM (Wkrs) | Endicott, NY | 8/17/95 | Printers. |
| 31,374 .. | Dupont Diagnostics, Inc (Wkrs) | Manati, PR | 8/15/95 | Plastic Bags for diagnostic substances. |
| 31,375 .. | Grumman Allied-LLV Div. (Wrks) | Montogmery, PA | 8/01/95 | Postal Vehicles. |
| 31,376 .. | Howard Industries (Wkrs) | Milford, IL | 8/07/95 | Industrial Fans & Motors. |
| 31,377 .. | Jefferson Smurfit Corp. (UPIU) | New Brunswick, NJ | 8/07/95 | Corrugated Shipping Containers. |
| 31,378 .. | Jusher Manufacturing Co (Wkrs) | Tishomingo, OK | 8/14/95 | Neckties. |
| 31,379 .. | Lexington Sportwear (Wkrs) | Lexington, SC | 8/14/95 | Men's Outerwear Jackets. |
| 31,380 .. | Maynard H. Moore, Jr. (Wkrs) | Stoneham, MA | 8/16/95 | Leather for Shoe Trade. |
| 31,381 .. | The Metallized Papwer Corp (Wkrs) | McKeesport, PA | 8/18/95 | Metalized Paper. |
| 31,382 .. | O.A.I., Inc (Wkrs) | Hartshorne, OK | 8/15/95 | Radios & Commercial Electronics. |
| 31,383 .. | Oryx Energy Company (Wkrs) | Dallas, TX | 8/10/95 | Crude Oil and Natural Gas. |
| 31,384 .. | VSD, Inc. (Wkrs) | Florence, SC | 8/11/95 | Inductors & Resistors. |

[FR Doc. 95–22481 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

**TA–W–31,182 Willwear Hosiery, Shogren Industries, Marion, NC**

**TA–W–31,183 Willwear Hosiery, Shogren Industries, Chattanooga, TN**

**TA–W–31,184 Shogren Industries, Concord, NC**

**TA–W–31,185 Shogren Industries, Upper Brookville, NY**

**TA–W–31,185A Nation Hosiery Mills, Inc., Chattanooga, TN**

**TA–W–31,185B Kentucky Lakes Hosiery Mills, Princeton, KY**

## Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1995, applicable to all workers at Shogren Industries, located in Marion, North Carolina, Chattanooga, Tennessee, Concord, North Carolina, and Upper Brookville, New York. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that workers of Shogren Industries located at Nation Hosiery Mills, Inc. in Chattanooga, Tennessee and Kentucky Lakes Hosiery Mill in

Princeton, Kentucky were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by imports.

The amended notice applicable to TA W–31,185 is hereby issued as follows:

''All workers of Willwear Hosiery/Shogren Industries, Marion, North Carolina (TA–W–31,182); Chattanooga, Tennessee (TA–W–31,183); Shogren Industries, Concord, North Carolina (TA–W–31,184); Upper Brookville, New York (TA–W–31,185); Nation Hosiery Mills, Inc., Chattanooga, Tennessee (TA–W–31,184A); and Kentucky Lakes Hosiery Mill, Princeton, Kentucky (TA–W–31,185B) who became totally or partially separated from employment on or after May 23, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 31st day of August 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22480 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–31,077]**

## Sundstrand Corporation, Electric Power Systems Division, Lima, Ohio; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Sundstrand Corporation, Electric Power Systems Division, Lima, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,077; Sundstrand Corporation, Electric Power Systems Div., Lima, Ohio (August 31, 1995)

Signed at Washington, DC this 31st day of August, 1995.

**Victor J. Trunzo,**

*Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–22479 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–30–M

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# NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (95–086)]**

## Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that Wessex, L.L.C., of Blacksburg, Virginia, has requested a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,296,288 entitled ''Protective Coating for Ceramic Materials,'' which issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration on March 22, 1994. Written objection to the prospective grant of a license should be sent to Mr. Harry Lupuloff, Senior Patent Attorney, NASA Headquarters.

**DATES:** Responses to this Notice must be received by November 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry Lupuloff, NASA, Code GP, Washington, DC 20546; telephone number (202) 358–2067.

Dated: September 1, 1995.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 95–22443 Filed 9–8–95; 8:45 am]

BILLING CODE 7510–01–M

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# NATIONAL SCIENCE FOUNDATION

## Advisory Committee for Education and Human Resources Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (PL 92–463, as amended), the National Science Foundation announces the following Committee of Visitors meeting:

*Name:* Committee of Visitors (COV) Review of the Graduate and Minority Graduate Fellowship Programs (1119).

*Date & Time:* September 25, 1995; 8:00 am to 5:00 pm.

*Place:* NSF Headquarters, 4201 Wilson Boulevard, Arlington, Virginia.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Susan Duby, National Science Foundation, 703/306–1694.

*Purpose of Meeting:* To provide oversight review of the Graduate and Minority Graduate Fellowship Programs.

*Agenda:* To carry out Committee of Visitors' review, including examination of decisions on applications, reviewer comments, and other privileged materials.

*Reason for Closing:* These meetings are closed to the public because the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 (b)(c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: September 5, 1995.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 95–22407 Filed 9–8–95; 8:45 am]

BILLING CODE 7555–01–M

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# NUCLEAR REGULATORY COMMISSION

## Availability of Draft Application; Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactors (NPRs) a ''Format and Content for Applications for the Licensing of Non-Power Reactors'' (F&C) and a ''Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Reactors'' (SRP). The NRC has made available drafts of Chapters 2, ''Site Characteristics,'' 3, ''Design of Structures, Systems, and Components,'' 4, ''Reactor Description,'' 7, ''Instrumentation and Control Systems,'' 10, ''Experimental Facilities and Utilization,'' 13, ''Accident Analyses,'' and 18, ''High-Enriched Uranium to Low-Enriqued Uranium Conversions,'' of the F&C and SRP documents for comment. Other draft chapters will be made available for comment as they are completed.

Copies of these chapters have been placed in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC. Single copies of these documents may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, MS: O–11–B–20, Washington, DC 20555. Comments on this chapter should be sent by November 28, 1995, to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–22460 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket No. 50–293]**

## Boston Edison Company, Pilgrim Nuclear Power Station; Issuance of Director Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, granted in part and denied in part a Petition dated March 10, 1995 (Petition), filed pursuant to 10 CFR 2.206 by Ms. Mary Elizabeth Lampert and 62 other persons (Petitioners).

The Petition requested that during the March 25, 1995, refueling outage and In-Vessel Visual Inspection conducted by the licensee, certain technical concerns be addressed, and that before Pilgrim goes back on-line, appropriate repairs be made or corrective action be taken, and that the U.S. Nuclear Regulatory Commission (NRC or Commission) discuss the status of such repairs or corrective actions with the public in Plymouth, Massachusetts. The Petition also requested that the NRC terminate its policy of issuing Notices of Enforcement Discretion (NOEDs) and asserted that the NRC has not been enforcing its regulations.

On April 19, 1995, the Director informed the Petitioner that the NRC management and staff was meeting with the Boston Edison Company (licensee) on May 11, 1995, and they would hold a meeting to receive public input on the evening of May 11, 1995. The Petitioner's request to discuss the status of repairs or corrective actions was granted by virtue of the public meeting.

The Director of the Office of Nuclear Reactor Regulation has denied the Petitioners' requests to require repairs and corrective actions before permitting the Pilgrim plant to resume operation, and to terminate the use of NOEDs.

The reasons for this decision are explained in the ''Director's Decision Under 10 CFR 2.206,'' (DD–95–19) which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Pilgrim facility at Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

A copy of the Decision will be filed with the Office of the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after date of issuance of the Decision unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

**William T. Russell,**

*Director, Office of Nuclear Reactor Regulation.*

## Appendix A to this Document—Director's Decision Under 10 CFR 2.206: DD–95–19; Boston Edison Company, License No. DRP–35

*I. Introduction*

Ms. Mary Elizabeth Lampert and 62 other individuals (Petitioners) submitted a Petition dated March 10, 1995, pursuant to 10 CFR 2.206 requesting action with regard to the Pilgrim Nuclear Power Station (Pilgrim), operated by the Boston Edison Company (licensee).

The Petition requested that: (1) during the refueling outage and In-Vessel Visual Inspection scheduled for March 25, 1995, by the licensee, certain technical concerns be addressed, and that before Pilgrim goes back on-line, appropriate repairs be made or corrective action be taken; (2) the U.S. Nuclear Regulatory Commission (NRC or Commission) discuss the status of such repairs or corrective actions with the public in Plymouth, Massachusetts; and (3) the NRC terminate its policy of issuing Notices of Enforcement Discretion (NOEDs) and begin enforcing the regulations again.

As the bases for these requests, the Petitioners identified three groups of technical concerns: (1) age-related deterioration of 25 safety related reactor internals; (2) parts and components ''known to be a problem at Pilgrim,'' including the core shroud, water level indicators, quality assurance for fuel pool cooling system during loss-of-coolant accident/loss of offsite power, motor-operated valves, containment integrity, drywell liner corrosion vulnerability, station blackout vulnerability, and Rosemount transmitters; and (3) parts and components ''potentially a problem at Pilgrim,'' including potential fuel rod corrosion and substandard and/or counterfeit parts. The Petitioners contend that allowing the reactor to operate under a NOED cannot pose less risk to the public health and safety than keeping the reactor shut down until NRC regulations are met.

*II. Background*

By letter dated April 19, 1995, the NRC acknowledged receipt of the Petition and offered a public meeting, which was held in Plymouth, Massachusetts on May 11, 1995. At that meeting, the results of the licensee's inspections conducted during the outage were discussed.

I have completed my evaluation of the Petition. As explained below, Petitioners have failed to raise any safety concern which would warrant delaying restart of the Pilgrim Nuclear Power Station (which occurred on June 2, 1995), and the Petitioners' request that the NRC terminate the use of NOEDs is denied.

*III. Discussion*

A. Age-Related Deterioration of Reactor Internals

Many components inside boiling-water reactor (BWR) vessels (i.e., internals) are made of materials such as stainless steel and various alloys that are susceptible to corrosion and cracking. As materials age, they degrade. This degradation can be accelerated by stresses from temperature and pressure changes, irradiation effects on material properties, chemical interactions, and other corrosive environments. As BWRs age, the amount of cracking is expected to increase. Several cases of internals cracking and degradation have been reported to the NRC over the years. In a number of cases, the NRC has concluded that full power operation of the reactor with time-dependent degradation, related to the operating environment, of reactor vessel internals is acceptable as long as the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) safety margins are satisfied and maintained. In the remaining cases, replacement or repairs were performed on the degraded components or internals. The NRC has met with industry every year since 1988 to review the generic safety implications of reactor internals potentially susceptible to age-related cracking. Additionally, a special industry review group, the Boiling Water Reactor Vessels and Internals Project (BWRVIP), was formed to focus on resolution of reactor vessel and internals degradation.

Several industry standards and regulatory requirements and guidelines are in place to address inservice inspections (ISIs) of reactor components. Moreover, the NRC and industry have responded as new issues emerge. For example, issued Generic Letter (GL) 94–03, ''Intergranular Stress Corrosion Cracking of Core Shrouds (IGSCC) in Boiling Water Reactors,'' ''in July 1994 requesting Licensees to inspect their shrouds and provide an analysis justifying continued operation until inspections could be completed. General Electric issued Services Information Letter (SIL) No. 588, ''Top Guide and Core Plate Cracking,'' in February 1995 providing specific recommendations for inspections of BWR top guides and core plates. In addition to addressing emerging the BWRVIP is working on a comprehensive plan that will provide detailed guidance on managing cracking in all BWR internals. The plan will address cracking susceptibility, safety consequences, inspection scope and methodology, flaw evaluation, repair strategies, and mitigation of degradation. Several top level executives and technical staff of the Licensee are on the various BWRVIP committees that are developing generic standards for ISI and repairs.

Petitioners request that 25 components be inspected during the 1995 refueling outage (RFO No. 10), and that they be free of any signs of IGSCC or other kind of fatigue.

During RFO No. 10, the licensee indicated completion of the ISI examinations for the third period of the second Pilgrim 10-year inspection interval in accordance with Section XI of the ASME Code, 1980 Edition with Winter 1980 Addenda. This included all 25 components requested by the Petitioners, except the steam separator, neutron source holder and surveillance sample holders which are not safety-related components. The in-core neutron flux monitor components, in-housings, guide tubes, dry tubes, the vessel head cooling spray nozzle, and the fuel supports are not required by NRC regulations to be inspected. The NRC inspected Pilgrim's ISI program and related activities during the 1994 RFO No. 9 and concluded that the second interval program plan was sufficiently comprehensive to ensure safety and met the requirements of the ASME Code, and thus 10 CFR 50.55a(a)(2). The ISI examinations conducted in RFO No. 10 included the core support structure, control rod drive housing, core spray internal piping and spargers, and feedwater spargers.

Augmented examinations were also conducted in which various internals were examined, including the shroud support and access hole covers, jet pump riser braces, shroud head bolts, jet pump sensing lines, steam dryer support, steam dryer baffle plate, top guide, core plate, and control rod stub tubes.

Control blades (control rods for BWRs) are replaced at specified intervals. The licensee also implemented a preemptive repair of its core shroud due to the high susceptibility to IGSCC. See Section III.B.(1), below. As discussed during the May 11, 1995, meeting between the NRC and the public, the inspection results from RFO No. 10 did not reveal any indications of significant time-dependent deterioration of the reactor internals.

The NRC staff concludes that the inspections, examinations, and repairs performed by the licensee during RFO No. 10 and previous outages are sufficient to provide reasonable assurance that no age-related failure of components or internals would occur during the next operating cycle, which is scheduled to end March 21, 1997. Design features, plant procedures, and operator training are developed to ensure safety in the unlikely event that a failure were to occur. The NRC will continue to take regulatory action on a plant-specific or generic basis, as may be appropriate, when time-dependent degradation issues are identified. During the next refueling outage, the licensee will again conduct an in-vessel inspection of safety-related interval components.

Accordingly, Petitioners have not raised a safety concern regarding age-related degradation of reactor internals at Pilgrim which would have warranted prohibiting restart after RFO No. 10.

B. Parts and Components Known To Be a Problem at Pilgrim

(1) Core Shroud

Petitioners express concern about the type of repairs that would be done to the core shroud during RFO No. 10, based on ''the different approach taken in Germany at the Wuergassen NPS and at the Oyster Creek NPS in NJ.'' Petitioners state that German nuclear regulators required replacement of shrouds with cracking, rather than repair of the shroud. Petitioners state that at Oyster Creek, ten tie rods are attached to holes in Type 304 stainless steel, which is subject to IGSCC and is welded to the bottom of the core shroud assembly. Petitioners are concerned that if the same approach were used at Pilgrim, there would be problems with the structural integrity of the materials the tie rods are welded to and with ''loose parts.''

Officials of PreussenElektra AG, the owner of Wuergassen, initially intended to replace the core shroud at Wuergassen, as reported in *Nucleonics Week* on November 24, 1994. Differences in the design of Wuergassen and NRC-licensed BWRs exist which would make replacement of the core shroud at Wuergassen less complicated than at NRC-licensed plants. For example, the shroud at Wuergassen is bolted on to the shroud support, whereas shrouds of NRC licensees are welded. However, in a press release issued June 1, 1995, PreussenElektra AG decided to decommission the Wuergassen NPS based on economic considerations. As a result, replacement of a BWR core shroud, foreign or domestic, has yet to be undertaken.

By letter dated November 25, 1994, the NRC staff issued the ''Safety Evaluation Regarding the Oyster Creek Core Shroud Repair,'' which approved the scheduled repair as an acceptable alternative to the standards of the ASME Boiler and Pressure Vessel Code. See 10 C.F.R. § 50.55a(a)(2) and 50.55a(a)(3)(i). Oyster Creek and Pilgrim are utilizing similar tie-rod assemblies to structurally replace the core shroud during normal and accident conditions. The difference in the number of tie-rod assemblies used, i.e., ten tie-rod assemblies at Oyster Creek and four tie-rod assemblies at Pilgrim, is related to the contracted vendor's loading distribution design and the associated hardware on the tie-rod assembly. The NRC staff has thoroughly reviewed the Pilgrim repair design and conducted inspections during the core shroud repair process. The staff issued the ''Safety Evaluation Regarding Pilgrim Nuclear Power Station Core Shroud Repair,'' dated May 12, 1995. A synopsis of our review follows.

The design of the Pilgrim shroud repair consists of four (4) stabilizer assemblies, which are installed 90° apart in the shroud/reactor vessel annulus, between attachment points at the top of the shroud and the gusset assemblies on the lower shroud support plate. Each stabilizer assembly consists of a tie rod, and upper spring, a lower spring, an upper bracket and other smaller parts. The tie rod provides the vertical load transfer from the upper bracket to the reactor pressure vessel (RPV) gusset attachment and supports the springs. The upper spring provides radial load transfer at the top guide elevation from the shroud to the RPV. The lower spring provides radial load transfer from the shroud at the core plate elevation to the RPV. The upper bracket provides an attachment to the top of the shroud and restrains the upper shroud weld. Upper-mid and lower-mid supports along the tie rod length provide radial load transfer for the mid sections of the shroud and increase the natural frequency of the tie rods to reduce flow-induced vibration. Two wedges between the core support plate and the shroud are also installed at each stabilizer location to prevent relative motion of the core plate to the shroud. Each cylindrical section of the shroud between welds H1 through H9 is prevented from unacceptable lateral motion by the stabilizers. The section between H9 and H10 is prevented from unacceptable motion by the existing gussets. The lower end of the stabilizers are attached to pins which are placed in holes cut into gusset plates at the bottom. The gusset assemblies and their welds are Inconel and are not considered subject to cracking by industry and the NRC staff. Inconel is a nickel based alloy which is less likely to corrode and degrade than stainless steel, which is an iron based alloy. However, these welds, including those attaching the gussets to the vessel and to the lower shroud support plate (which must resist the vertical stabilizer loads) have been inspected for cracks during this outage, and no crack indications were found. Together, the tie rods and lateral restraints resist both vertical and lateral loads resulting from normal operation and design accident loads, including seismic loads and postulated pipe ruptures.

The NRC staff found that the proposed repair does not affect the ability of operators to insert control rods, the performance of the ECCS, particularly the core spray system, or the ability to reflood and cool the core. The staff concluded that the proposed repair does not pose adverse consequences to plant safety; therefore, plant operation is acceptable with the proposed core shroud repair installed.

In compliance with 10 CFR 50.55a(a)(3)(i), the core shroud repair has been designed as an alternative to the requirements of the ASME Code. Based on a review of the shroud modification hardware from structural, systems, materials, and fabrication considerations, the NRC staff concludes that the proposed modifications of the Pilgrim core shroud would provide an acceptable level of quality and safety. The staff has determined that the licensee's repair of the core shroud will not result in any increased risk to the public health and safety and is, therefore, acceptable.

(2) Water Level Indicators

Petitioners assert that because of a pipe design deficiency, water level indicators at Pilgrim are not fully operable due to high-pressured gas in the water, and that operator training is not the appropriate solution.

Level anomalies were observed in reactor vessel water level indication at several BWRs during controlled depressurization, while commencing plant outages or following reactor trips. These anomalies consisted of ''spiking'' or ''notching'' of level indication, and in one instance, a sustained error in level indication. The root cause of these level indication anomalies is the effect of non-condensible gas dissolved in the reference leg of ''cold reference leg'' type water level instruments. Under rapid depressurization conditions, non-condensible gases can cause significant errors in the level indication.

Cold reference leg water level instruments measure reactor vessel water level by

measuring the differential pressure of two columns of water, i.e., the variable leg and the constant height reference leg. The reference leg is maintained filled to a constant height of water by the condensate chamber. Steam is condensed in the condensate chamber and keeps the reference leg full. Excess condensate is returned to the vessel through the steam supply line. Non-condensible gases, such as hydrogen and oxygen, formed by radiolysis in the reactor vessel, are present in the steam supplied to the condensate chamber. The gases can collect in the condensate chamber and can accumulate to high partial pressures. The gases then become dissolved in the water at the top of the reference leg, and the dissolved gases can be transported down the reference leg by small leaks in valves and fittings at the bottom of the reference leg, diffusion, and/or thermal convection.

Dissolved gases in the reference leg do not present a problem unless the instrument is depressurized. When depressurized, the gases come out of solution and form bubbles that travel up the reference leg. During slow depressurization, level indication has been seen to temporarily ''spike'' or ''notch'' while a bubble moves through the vertical sections of the piping. Significant spiking may automatically actuate such systems as the primary containment isolation system (PCIS). This occurred at the Pilgrim plant. After spiking, which is of short duration, the indicated water level returns to actual level. Level spiking is of little significance. Bubbling of the gases may eject a significant amount of water from the reference leg. Loss of reference leg inventory will cause an erroneously high level indication. This occurred during a normal plant cooldown on January 21, 1993, at Washington Nuclear Power Unit 2 (WNP–2), resulting in a 32-inch error in level indication that gradually recovered over a period of 2 hours. If the reactor is rapidly depressurized, as would occur during a design basis loss-of-coolant accident (LOCA) or opening of the automatic depressurization system (ADS) valves, even larger errors in the level indication could result. However, analyses presented by the industry indicated that significant errors would not be expected until the reactor is depressurized below approximately 450 psi.

The NRC staff has taken several actions to address this problem. The BWR Owners Group (BWROG) Regulatory Response Group (RRG) was activated during July 1992. The staff also issued Information Notice 92–54 in July 1992, GL 92–04 in August 1992, and Information Notice 93–27 in March 1993 to alert licensees to the potential problem and to request information concerning actions taken or planned by licensees in response to potential errors in level indication. The BWROG conducted a test program to support their efforts to resolve this issue. The results of the BWROG reference leg de-gas test program confirmed that no significant errors in level indication will occur until the reactor is depressurized below 450 psig, and that large errors in level indication are possible once the reactor is depressurized to lower pressures.

The NRC staff received additional information from the BWROG pertaining to reactor vessel water level instrumentation inaccuracies during normal depressurization due to the effects of non-condensible gas. At the staff's request, the BWROG submitted a report on May 20, 1993, discussing the impact of level errors on automatic safety system response and operator actions during transients and accidents initiated from reduced pressure conditions during plant cooldown (shutdown mode). Based on this information, in addition to the January 21, 1993, WNP–2 event, and data from the reference leg de-gas testing that was conducted by the BWROG, the staff concluded that additional short-term actions needed to be taken for protection against potential events occurring during normal cooldown. On May 28, 1993, NRC Bulletin (NRCB) 93–03,

''Resolution of Issues Related to Reactor Vessel Water Level Instrumentation,'' was issued, in which the staff requested each BWR licensee to implement additional short-term compensatory actions, and to implement a hardware modification to resolve this issue at the next cold shutdown after July 30, 1993.

The staff has received responses to NRC Bulletin 93–03 from all licensees. All licensees completed short-term compensatory actions and committed to install hardware modifications. Licensees for all affected plants have either completed installation of hardware modifications or are currently shutdown and will install the hardware modifications prior to restart.

To solve the problem identified in NRC Bulletin 93–03, Pilgrim installed a backfill modification to all safety-related water level instrumentation in July 1993. Non-safety-related control instrumentation was not modified by Pilgrim, because such instrumentation was not covered by the actions requested in NRC Bulletin 93–03.

As Petitioners note, an event occurred at Pilgrim on November 8, 1993, involving the non-safety-related water level instrumentation. This event was caused by failure of the licensee to back flush the feedwater control instrumentation reference legs prior to restart due to procedural inadequacy and failure to cross-check multiple indications of reactor vessel water level during startup due to operator error. This event is not safety significant for the following reasons:

(a) event initiation was the result of two independent errors which are not expected to have a high frequency of recurrence;

(b) safety systems and non-safety systems are separated by design; thus, the availability and capability of the safety systems should not be impacted by errors in the non-safety instrumentation and the ability of safety systems to protect the plant should not be compromised; and

(c) the safety systems responded to the event as expected.

This issue is closed because the licensee took adequate corrective actions in response to the November 8, 1993, event. *See* NRC Inspection Report 50–293/93–20, dated January 11, 1994.

Based on the above, Petitioners have not raised a substantial safety concern regarding safety-related water level instrumentation at Pilgrim.

(3) Quality Assurance for Fuel Pool Cooling System During LOCA/LOOP

The Petitioners asserted that workers would be exposed to fatal levels of radiation while manually activating the backup cooling system during a LOCA.

In November 1992 two engineers working under contract at Susquehanna Steam Electric Station filed a 10 CFR 21.21 report. The report detailed design concerns at Susquehanna that could lead to the sustained loss of forced cooling for the stored spent fuel under certain accident or abnormal conditions. The engineers postulated that the environmental conditions developed following a loss of forced cooling would adversely affect equipment necessary for safe-shutdown and accident mitigation. The engineers concluded that these issues had generic implications.

Between November 1992 and October 1994, the NRC staff performed an extensive evaluation of the Susquehanna spent fuel pool cooling design concerns. The staff concluded that these concerns were of low safety significance in the ''Final Safety Evaluation By the Office of Nuclear Reactor Regulation Regarding Loss of Spent Fuel Pool Cooling Events,'' dated June 19, 1995. This conclusion was based on the fact that the probability of recovering forced cooling of the stored spent fuel with access to the necessary equipment was high, and the probability of experiencing a severe core damage accident, which may prevent access to systems need to cool the spent fuel pool, was low.

The staff issued Information Notice 93–83, ''Potential Loss Of Spent Fuel Pool Cooling Following A Loss Of Coolant Accident,'' (October 7, 1993), describing the Section 21.21 report related to Susquehanna. The information notice did not require specific action by licensees. Recognizing the plant-specific design features and operational controls of most spent fuel pool cooling system designs, the staff concluded that further evaluation of spent fuel pool storage safety issues at other plants was warranted to determine the need for further generic action.[1]

The staff has developed and begun implementing a generic action plan to evaluate generic issues. On-site safety assessments of spent fuel storage at selected reactor facilities have been completed. Monticello Nuclear Power Plant is similar to Pilgrim and was one of the nuclear facilities assessed during the week of March 27, 1995. The assessment team concluded that the potential for a sustained loss of spent fuel pool cooling or a significant loss of spent fuel pool coolant inventory at the site visited was remote based on observed design features and operational controls. Based on the above, the NRC staff has concluded that the Petitioners have not identified any safety concerns at Pilgrim regarding spent fuel pool cooling during a LOCA/LOOP.

[1] In the near future, the staff will issue an additional information notice describing the results of its detailed evaluation of the Susquehanna facility. This information notice will be an interim communication and will not represent the end of the staff's generic review.

(4) Motor-Operated Valves

Petitioners request information on the status of the motor-operated valve (MOV) program at Pilgrim, and inquire why Pilgrim has not been required to fix all MOVs during the March 1995 outage.

The NRC issued GL 89–10, ''Safety-Related Motor-Operated Valve Testing and Surveillance'' (June 28, 1989) to request that licensees verify the capability of all safety-related MOVs to perform their design basis functions. GL 89–10 requested that licensees complete differential pressure and flow testing for the verification of MOV design basis capability within 5 years after the issuance of GL 89–10 or three refueling outages after December 1989, whichever was later.

Pilgrim is scheduled to complete its MOV Design Basis Capability Verification by April 1997. Although this is somewhat later than some other plants, the licensee is being given the same number of outages (three outages with 24 month cycles) as other licensees to complete the verification, and the program commenced somewhat later at Pilgrim due to the 1990 restart from an extended outage.

During the implementation of GL 89–10, licensees have discovered more MOV concerns and experienced greater difficulty in conducting MOV tests at full design basis differential pressure and flow than envisioned when the GL 89–10 schedule was established. Where significant MOV problems are identified, the NRC ensures that licensees resolve these problems promptly. Further, when the evaluation of NRC-sponsored MOV test results indicated potential problems with specific MOVs in high pressure systems at boiling-water reactor (BWR) nuclear power plants, the NRC issued Supplement 3 to GL 89–10 in October 1990. Supplement 3 requested that BWR licensees promptly evaluate the capability of MOVs used for containment isolation in the steam lines of the high-pressure coolant injection and reactor core isolation cooling systems and in the supply line to the reactor water cleanup system. Further, the staff issued Supplement 5 to GL 89–10 in June 1993, requesting that licensees ensure that new information on the increased inaccuracy of MOV diagnostic equipment be addressed. These two actions were satisfactorily completed by Pilgrim.

The NRC staff has been monitoring the progress of the GL 89–10 program at Pilgrim closely. From December 13 to 17, 1993, and March 22 to 25, 1994, the NRC staff conducted an inspection of the GL 89–10 program at Pilgrim. As stated in NRC Inspection Report 50–293/92–80, the NRC staff had the following findings as a result of the March 1992 inspection:

(a) The method used to set the MOV torque switches using diagnostic testing equipment was inadequate;

(b) the torque switch settings on several safety-related MOVs were not set in accordance with the plant design documents;

(c) corrective actions taken in response to an internal audit of the GL 89–10 Program regarding the torque switch settings of safety-related valves were inadequate;

(d) the GL Supplement 3 response for the reactor water cleanup system isolation valve 1202–5 was inadequate;

(e) plans for conducting design-basis differential pressure testing have not been clearly established;

(f) the current work instructions for performing design basis reviews and switch setting calculations lack adequate detail; and

(g) a considerable effort remains to implement the GL 89–10 program in a timely manner.

The NRC staff found considerable progress in the licensee's MOV program since the initial NRC team inspection in March 1992. Particularly, the staff concluded that the findings from the March 1992 inspection had been satisfactorily addressed. See Inspection Report No. 50–293/93–22 (April 14, 1994). In addition, the testing of differential pressure and/or static pressure of all of the Priority 1 (highest risk) MOVs that can be tested was completed by the end of RFO No. 10. Additionally, the licensee has evaluated all of the GL 89–10 MOVs for susceptibility to pressure locking and thermal binding and, by the end of RFO No. 10, completed modifications on the few valves that were considered susceptible. The staff concludes that the licensee is on schedule to meet its April 1997 completion date.

Based on the progress made to date by the licensee in implementing its GL 89–10 program at Pilgrim, the NRC staff did not consider it necessary that the licensee complete its GL 89–10 program during RFO No. 10. In addition to review of the licensee's submittals in response to GL 89–10 and its supplements, the NRC staff is conducting an extensive inspection program to evaluate the MOV program implemented in response to GL 89–10 at Pilgrim, as well as at other nuclear power plants. The NRC staff concludes that the licensee has substantially reduced the concerns with MOV operation under design basis conditions and is progressing significantly toward completing the GL 89–10 program. Nevertheless, if significant MOV problems are identified at Pilgrim, the licensee will be responsible for addressing those problems in accordance with their safety significance, irrespective of the GL 89–10 completion schedule. Further, the NRC will continue to take regulatory action on a plant-specific or generic basis, as appropriate, when MOV problems are identified.

Based upon the actions taken to date by the licensee to address safety-related MOV issues and the NRC's inspections regarding the licensee's actions on the GL 89–10 program, the NRC staff concludes that no corrective actions are required.

(5) Containment Integrity

Petitioners ask whether the hardened wetwell vent system (HWWVS), referred to as the ''Torus Vent'', which ''allows venting of radioactive effluents directly into our atmosphere,'' will be corrected in RFO No. 10.

The licensee installed the HWWVS modification during the 1986–1988 outage, thus providing the capability to establish alternate containment decay heat removal if RHR torus cooling capability is lost. The direct torus venting minimizes the potential for core damage and containment failure. The HWWVS has the capability of mitigating a wide range of events including many that are beyond the Design Basis Accidents for the facility. Its installation, along with the procedures for its use, will reduce the likelihood of a core melt from accident sequences involving the loss of long-term decay heat removal. This accomplished by preventing any further damage to safety equipment in the reactor building by ensuring that the piping from the containment to the venting stack will not fail. Further, as a mitigation measure, the vent pathway is located in the wetwell air space. This location ensures that the vented non-condensible gases will pass through the suppression pool thereby significantly scrubbing the fission products. The HWWVS is an improvement that the NRC staff recommended in its Mark I Containment Performance Improvement Program, which identified plant modifications that could enhance the capability to both prevent and mitigate the consequences of severe accidents.

The HWWVS has valves that are kept closed during plant operation, assuring containment integrity. Additionally, the HWWVS design incorporates a device called a rupture disc, which provides an additional leak-tight barrier to further prevent the transport of the containment atmosphere in the wetwell to the atmosphere. The HWWVS is not in use during normal plant operation, nor is it expected to be used during anticipated transient conditions. Petitioners have not demonstrated any basis why this system should be ''corrected.''

(6) Drywell Liner Corrosion

Petitioners request information on the status of drywell liner corrosion vulnerability and asks whether it would be corrected during RFO No. 10.

The NRC issued GL 87–05, ''Request For Additional Information-Assessment of Licensee Measures to Mitigate and/or Identify Potential Degradation of Mark I Drywells,'' as a result of the November 1986 discovery of corrosion of the Oyster Creek steel drywell in the area of the sand cushion. GL 87–05 did not establish any regulatory requirements other than for Mark I licensees to provide the staff with information as to what actions, if any, were being taken as a result of the Oyster Creek finding. The licensee responded to GL 87–05 by letter dated May 11, 1987. The licensee implemented a surveillance program to detect whether a corrosive environment exists on the external surface of the drywell. This is done by checking the drywell liner air gap drain lines for the presence of water during every refueling outage.

In January 1987, prior to issuance of GL 87–05, the licensee conducted ultrasonic inspections of the interior of the drywell liner in the area of the sand drains, which confirmed liner integrity. In January 1988, the drain lines were verified not to be blocked by using a boroscope. As of the last surveillance, conducted on March 31, 1995, no water leakage had been detected. Petitioners have not demonstrated any basis for correcting this system.

(7) Station Blackout

Petitioners request information on station blackout vulnerability and ask whether it would be corrected during RFO No. 10.

On December 23, 1993, the NRC issued ''NRC Pilot Station Blackout Team Inspection,'' a report concerning the Pilgrim plant, Inspection Report 50–293/93–80. The purpose of that inspection was to review Pilgrim's programs, procedures, training, equipment and systems, and supporting documentation for implementing the Station Blackout (SBO) Rule, 10 CFR 50.63. The actions taken to implement the station blackout rule are important because many of the systems required for decay heat removal and containment cooling are dependent on the availability of alternating current (ac) power. In the event of a station blackout, relatively few systems that do not require ac power are depended upon to remove decay heat, until ac power is restored.

The staff concluded in Inspection Report 50–293/93–80 that:

(a) Pilgrim had sufficient condensate inventory to cope with an 8-hour SBO duration;

(b) all areas which contained equipment needed for SBO coping had proper cooling;

(c) there was sufficient evidence that the torus temperature and the reactor vessel conditions would be maintained according to the plant TSs;

(d) the overall communications capability available during an SBO were adequate;

(e) adequate emergency lighting was available to support plant personnel operations during a station blackout; and

(f) plant modifications were properly installed, and post-modification and pre-operational tests were conducted in accordance with proper test procedures. Quality assurance and maintenance practices, operator training, and staffing levels were appropriate to cope with an SBO.

Accordingly, the Pilgrim plant is in compliance with Section 50.63 and the plant does not have a SBO vulnerability requiring ''correction'' during RFO No. 10.

(8) Rosemount Transmitters

Petitioners request information on the status of Rosemount transmitters at Pilgrim, and ask whether all would be inspected and corrected during RFO No. 10.

On December 22, 1992, the NRC staff issued Bulletin 90–01, Supplement 1, ''Loss of Fill-Oil in Transmitters Manufactured by Rosemount,'' which requested that licensees take appropriate corrective actions for Model 1153, Series B and D, and Model 1154 Rosemount transmitters manufactured before July 11, 1989, and used in safety-related applications or Anticipated Transient Without Scram (ATWS) systems. The performance of a transmitter that is leaking fill-oil gradually deteriorates and may eventually lead to failure. Although some failed transmitters have shown symptoms of loss of fill-oil prior to failure, it has been reported that in some cases the failure of a transmitter that is leaking fill-oil may be difficult to detect during operation. Transmitter failures that are not readily detectable increase the potential for common mode failure and may result in the affected safety system not performing its intended safety function. Supplement 1 identified specific actions for replacement or enhanced surveillance monitoring of the these transmitters, used in high pressure (greater than 1500 psi), medium pressure (greater than 500 psi and less than 1500 psi), and low pressure (less than 500 psi) applications.

The licensee responded to the requested actions of Bulletin 90–01, Supplement 1, on March 5, 1993 and August 30, 1993. There are a total of 40 Model 1153B transmitters currently in service, 14 medium pressure transmitters and 26 low pressure transmitters. The licensee committed to include each of these transmitters in its enhanced surveillance monitoring program. The licensee stated that there were no Model 1153D or 1154 transmitters currently in service.

The licensee also stated that there were 33 Model 1153B transmitters, manufactured after July 1989, in service. Such transmitters are not subject to the Bulletin 90–01, Supplement 1, requested actions because Rosemount corrected the oil leakage problem by an improved manufacturing and quality assurance process. Although Supplement 1 does not require these transmitters to be included in an enhanced surveillance monitoring program, the licensee has chosen to include them in its program. The licensee's enhanced surveillance program is based on both the trending of operating drift data and calibration drift data, and is in accordance with Rosemount Technical Bulletin No. 4.

The NRC, with assistance from its contractor, reviewed the licensee's response to Supplement 1, and in a letter dated November 29, 1994, concluded that the licensee satisfied the reporting requirements and conformed to the requested actions of Bulletin 90–01, Supplement 1. Accordingly, no further actions by the licensee were required with respect to this Rosemount Issue during RFO No. 10.

C. Parts and Components Potentially a Problem at Pilgrim

(1) Fuel Rod Corrosion

Petitioners request information regarding the status of zirconium alloy tubes installed at Pilgrim, and asks if their susceptibility to nodular corrosion would be corrected during RFO No. 10.

Nodular corrosion is a phenomena seen in plants that have copper in the reactor water at a concentration in the 20–30 parts per billion (ppb) range. Pilgrim systems design limits copper levels to less than 1 ppb in the reactor water. Additionally, all fuel rod cladding in use at Pilgrim has been subject to the GE Nuclear Energy in-process heat treatment (IPHT) process [2], which is a heat treatment process that evenly distributes the composition of the alloy thus lowering the susceptibility to nodular corrosion. Pilgrim has not experienced nodular corrosion, and failure of fuel rods is not expected from this phenomenon.

The NRC staff conducted two inspections of Teledyne Wah Chang Albany (TWCA), the manufacturer of zirconium alloy tubes. In April 1990, an employee of Teledyne Wah Chang Albany (TWCA) raised two concerns regarding the efficacy of TWCA's ''beta quench'' process, a step in the manufacture of zircaloy tube shells which improves the corrosion resistance of that product: (1) the accuracy of temperature indicating devices as a predictor of the temperature of the bulk profile of the zircaloy billet the beta quench process was measuring, and (2) even if the profiles of the induction furnaces are accurate, the induction furnaces cannot reproduce the profile conditions for each production zircaloy billet as the heating in the furnace is very sensitive to the position of the billet in the furnace.

Neither of the two NRC inspections substantiated the employee's concerns. See Inspection Reports 99901229/91–01 (November 27, 1991) and 99901229/94–01 (January 31, 1995). These inspection reports are available in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. TWCA also investigated these concerns. In a letter to the NRC dated January 10, 1991, TWCA forwarded the results of its investigation, concluding that these concerns were unfounded, although the employee continued to have concerns.

Based on the above, Petitioners have not demonstrated any basis for fuel rod corrosion corrective actions.

(2) Substandard and/or Counterfeit Parts

Petitioners state that Pilgrim was one of several plants identified in a 1990 study by the United States Government Accounting Office as using parts which did not meet government standards, but that the NRC has not asked plants such as Pilgrim to replace those parts. Petitioners request information on the status of substandard or counterfeit parts at Pilgrim, such as nuts, bolts, pipe fittings, circuit breakers and fuses, and whether corrective action would be required during RFO No. 10.

The NRC has been pursuing the issue of counterfeit and substandard parts as a two prong process for a number of years. The first process is reactive, directly addressing the possibility that substandard or counterfeit parts may have been supplied to nuclear power plants, assessing the safety significance and, if needed, replacing the parts. The second process is a proactive approach of improving the assurance that parts are of a high quality before they are put into use.

Since 1988, the NRC has performed over 200 inspections of vendors. During these inspections, the staff occasionally identified suspect practices and referred those cases to the Office of Investigations to determine if wrongdoing had been committed. The NRC also quickly published and disseminated the information to the entire nuclear industry. Over the past several years, the NRC has issued numerous Bulletins and Information Notices having to do with *potential* counterfeit and/or substandard parts and material. However, the staff has not yet identified an issue that, from a safety standpoint, resulted in any plant shutdowns. Nonetheless, the NRC determined that several issues could potentially reduce the margin of safety in some plants and requested some actions by licensees, usually through a Bulletin.

[2] TWCA does not produce fuel clad tubing, but supplies an intermediate product form to customers that do, including GE Nuclear Energy, who performs the IPHT on the forms.

If the NRC obtains information that some licensees are identified as potential customers of a vendor suspected of supplying counterfeit or substandard parts, an Information Notice is issued. The issuance of an Information Notice does not mean that the identified licensee(s) did, in fact, receive the questionable parts, but rather that they were potential customers. The licensees are responsible for reviewing their own procurement records to identify if they received the suspect parts. Their actions are subject to NRC review and inspection.

The 1990 GAO report, ''Nuclear Safety and Health: Counterfeit and Substandard Products Are a Governmentwide Concern,'' lists a wide range of products as having been received or suspected of having been received by nuclear plants. The information provided by the GAO report regarding products used in nuclear operations was obtained from the NRC and all of the information was made public through various NRC Information Notices and Bulletins. The Pilgrim station was listed in the GAO report as having received counterfeit or substandard fasteners and circuit breakers. Pilgrim was also listed as being suspected of receiving counterfeit or substandard pipe fittings/flanges and fuses.

On November 6, 1987, the NRC issued Bulletin 87–02, ''Fastener Testing to Determine Compliance With Applicable Material Specifications.'' The Bulletin requested all licensees to review their receipt inspection requirements and internal controls for fasteners and to determine, through testing, whether fasteners in stores at their facilities met required mechanical and chemical material specification requirements. Licensee responses were summarized in NUREG–1349, ''Compilation of Fastener Testing Data Received in Response to NRC Compliance Bulletin 87–02.'' NUREG–1349 identified that, of over 3500 fasteners tested, 8 percent of safety-related and 12 percent of nonsafety-related fasteners were found to be nonconforming. However, only 2 percent of the safety-related fasteners were found to be sufficiently out of specification to cause a concern regarding their ability to perform their intended safety function. As a result of the licensees' responses to Bulletin 87–02, the NRC issued a temporary inspection instruction to ensure that licensees verified that fasteners used in nuclear plants met the requisite specifications and that operability of safety-related components was not affected.

In response to Bulletin 87–02, Pilgrim tested 35 safety-related and 29 non-safety-related fasteners. Three safety-related and 6 non-safety-related fasteners were identified as having hardness values slightly out of specification. These slight deviations were not considered safety significant since the hardness deviations consisted of only 1 to 2 Rockwell points which is very close to the test accuracy of ± 1.0 Rockwell point. Furthermore, it is commonly recognized in the industry that this property is most easily influenced by variations in chemistry, heat treatment, and surface treatments.

On May 6, 1988, the NRC issued Bulletin 88–05, ''Nonconforming Materials Supplied by Piping Supplies, Inc. at Folsom, New Jersey and West Jersey Manufacturing Company at Williamstown, New Jersey.'' That Bulletin required NRC licensees to submit information regarding materials supplied by the named companies and requested the licensees to assure that the materials complied with ASME Code Section III, Subarticle NCA–3800 and design specifications requirements, or were suitable for their intended use, or to replace the materials. Following the issuance of that Bulletin and actions taken by licensees, the NRC met with representatives of the Nuclear Management and Resources Council (NUMARC) to discuss the status of licensee actions. NUMARC presented information on licensee and NUMARC/Electric Power Research Institute (EPRI) testing and evaluation methodology of numerous flanges. The information presented at that meeting showed that the material in question had acceptable strength and that continued use of the fittings and flanges did not present a safety problem. Therefore, the NRC issued Supplement 2 to Bulletin 88–05 on August 3, 1988, announcing that it was appropriate to suspend the actions requested by the Bulletin. NUMARC follow-up reports were analyzed by the staff and judged acceptable. Therefore, no further actions were required.

In response to Bulletin 88–05, Pilgrim identified and tested a number of suspect flanges. All were found to be satisfactory, with the exception of one which tested low in hardness. An engineering evaluation performed by Pilgrim determined the flange was acceptable and did not need to be replaced.

On July 8, 1988, the NRC issued Information Notice 88–46, ''Licensee Report of Defective Refurbished Circuit Breakers,'' which alerted licensees to the possibility of defective circuit breakers being supplied to the nuclear industry. Following the issuance of the notice, the NRC issued Bulletin 88–10, ''Nonconforming Molded-Case Circuit Breakers,'' which requested licensees to take action to provide reasonable assurance that those molded-case circuit breakers that did not have verifiable traceability to the circuit breaker manufacturer were able to perform their safety function. In response to the Bulletin, Pilgrim identified only one of 978 circuit breakers in its warehouse as not being traceable to the original equipment manufacturer. That breaker was the only one purchased on its purchase order and was subsequently discarded.

On April 26, 1988, the NRC issued Information Notice 88–19, ''Questionable Certification of Class 1E Components,'' to alert licensees to a possible problem with the certification of Class 1E components by Planned Maintenance Systems (PMS) of Mt. Vernon, Illinois. Information provided to the NRC by a licensee raised questions regarding the validity of certifications issued by PMS for Class 1E fuses PMS supplied. In response to Information Notice 88–19, the licensee reviewed its procurement/QAD documents. There was no indication that the licensee had procured any material from PMS directly or through Bechtel or General Electric. Furthermore, the NRC review of PMS records indicated that PMS did not supply material or services through intermediate suppliers to the Pilgrim station.

In addition to the Information Notices and Bulletins which identified specifics about potential counterfeit or substandard materials, the NRC staff has issued two generic letters providing information to the industry regarding procurement program improvements to help prevent the acceptance and use of counterfeit and/or substandard material. The industry, through the efforts of the Nuclear Energy Institute (NEI, successor to NUMARC), has also taken a strong approach to improve procurement programs by means of a Comprehensive Procurement Initiative, which addressed five areas which included general procurement, vendor audits, tests and/or inspections, obsolescent, and information exchanges. The Comprehensive Procurement Initiative has greatly reduced the incidence of substandard and/or counterfeit parts in the industry.

In view of the above, no action regarding substandard or counterfeit parts needed to be taken by the licensee before start-up of the Pilgrim plant following RFO No. 10.

D. NRC Oversight and Enforcement Discretion

Petitioners state that since September 1989, the NRC has either waived or chosen not to enforce regulations at nuclear reactors more than 340 times, and that of the last 100 industry requests for enforcement discretion, the Commission has granted every one. Petitioners also state that the NRC has granted at least seven NOEDs to Pilgrim since 1989. Petitioners assert that permitting a reactor to operate cannot pose less risk to public health and safety than keeping the reactor shut down until it meets regulations.

The NRC Enforcement Policy, Section VII.C., permits the staff to exercise discretion not to enforce applicable TSs or license conditions by issuance of a NOED. Such enforcement discretion may be exercised only if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety, in cases when a licensee's compliance with a TS Limiting Condition for Operation or other license condition would involve:

(a) an unnecessary plant transient; or

(b) performance of testing, inspection or system realignment that is inappropriate with the specific plant conditions; or

(c) unnecessary delays in plant startup without a corresponding health and safety benefit.

For an operating plant, the NOED is intended to (1) avoid undesirable transients as a result of forcing compliance with the license condition and, thus, minimize potential safety consequences and operational risks or (2) eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions. For plants in a shutdown condition, the NOED is intended to reduce shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide an overall safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

For plants attempting to start up, the need for exercising enforcement discretion is expected to occur less often than for

operating plants, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. Thus, the issuance of NOEDs for plants attempting to start up must meet a higher threshold.

The use of enforcement discretion does not change the fact that a violation of a license requirement will occur, nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation for which the licensee requests issuance of a NOED. Where the NRC staff has chosen to issue a NOED, enforcement action is normally considered for the root causes, to the extent violations led to the noncompliance for which enforcement discretion was used.

Petitioners have provided no basis warranting a change in the Commission's policy regarding the exercise of enforcement discretion pursuant to Section VII.C. of the Enforcement Policy.

*IV. Conclusion*

The institution of proceedings in accordance with Section 2.206, as requested by the Petitioner, is appropriate only where substantial safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point Units 1, 2, and 3), CLI–75–8, NRC 173, 175 (1975), and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This is the standard I have applied to the Petition. Petitioners have not raised any substantial safety concerns regarding age-related deterioration of reactor internals, or with other parts and components at Pilgrim. To the contrary, all potential problems identified by Petitioners regarding reactor internals and components have been satisfactorily addressed by the licensee at Pilgrim. Therefore, Petitioner's request to delay startup of the Pilgrim plant is denied. Additionally, for the reasons discussed above, Petitioners request to terminate the NRC policy of issuing notices of enforcement discretion to reactor licensees is denied. Petitioner's request for a public meeting was granted.

A copy of the Director's Decision will be filed with the Office of the Secretary for the Commission to review in accordance with 10 CFR 2.206(c). As provided by Section 2.206(c), this Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of August 1995,

**William T. Russell,**

*Director, Office of Nuclear Reactor Regulation*

[FR Doc. 95–22461 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

**[Docket Nos. 50–334 and 50–412]**

## Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Beaver Valley Power Station, Units 1 and 2; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by Duquesne Light Company (the licensee) to withdraw a portion of its August 31, 1994, application for a proposed amendment to Facility Operating License Nos. DPR–66 and NPF–73 for Beaver Valley Power Station, Units 1 and 2, located in Beaver County, Pennsylvania.

The proposed amendment involved deletion of certain license conditions and the following changes to the technical specifications (TSs):

1. Elimination of the references to specific frequencies for each of the Technical Specification required audits.
2. Elimination of the references to reviews and audits of the Emergency Plan and Security Plan.
3. Separation of the Inservice Inspection (ISI) and Inservice Testing (IST) Programs surveillance requirements and removal of the requirement that relief requests be granted before they are implemented for both IST and ISI.
4. Editorial changes which were necessitated by a reorganization.
5. Elimination of the reference to Appendix A of 10 CFR Part 55.
6. Elimination of the requirement to perform an independent fire protection and loss prevention program inspection annually.
7. Inclusion of the Offsite Dose Calculation Manual and Process Control Program and associated implementing procedures into the list of required audits.

On May 18, 1995, the licensee submitted a letter to the NRC requesting withdrawal of the proposed changes to the TSs dealing with audits of the Beaver Valley Power Station fire protection program and withdrawal of a proposed 25-percent grace period for all audit frequencies (Item 6 of August 31, 1994 application).

The Commission has previously issued a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing, which was published in the **Federal Register** on December 21, 1994 (59 FR 65812).

For further details with respect to this action, see the application for amendment dated August 31, 1994, and the licensee's letter of May 18, 1995, which withdrew the portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 31st day of August, 1995.

For the Nuclear Regulatory Commission.

**Donald S. Brinkman,**

*Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–22462 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

**[Docket Nos. 50–498 and 50–499]**

## Exemption

In the matter of Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas (South Texas Project, Units 1 and 2).

**I**

Houston Lighting & Power Company, (the licensee) is the holder of Facility Operating License Nos. NPF–76 and NPF–80, which authorizes operation of the South Texas Project, Units 1 and 2 (STP). The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facilities consist of two pressurized water reactors at the licensee's site in Matagorda County, Texas.

**II**

Section III.D.3 of Appendix J to 10 CFR Part 50 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are tests intended to measure containment isolation valve leakage rates.

**III**

By letter dated May 25, 1995, Houston Lighting & Power (HL&P) requested relief from the requirement to perform Type C tests during each reactor shutdown for refueling. HL&P proposes to perform the required Type C tests while the plant is at power.

The licensee's request cites the special circumstances of 10 CFR 50.12,

paragraph (a)(2)(ii), as the basis for the exemption. The licensee states that the underlying purpose of the rule is to assure that adequate testing is done to assure containment integrity. The licensee's view is that from the standpoint of testing adequacy, *when* the testing is performed is not relevant because the conditions of testing are the same regardless of when it is performed. Taking credit for testing performed during power operation provides the same degree of assurance of containment integrity as taking credit for testing performed during shutdown. Therefore, consistent with 10 CFR 50.12, paragraph (a)(2)(ii), the licensee proposes that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

**IV**

Section III.D.3 of Appendix J to 10 CFR Part 50 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The licensee proposes an exemption to this section to perform the required Type C tests while the plant is at power.

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The staff agrees with the licensee's views provided above. In addition, the NRC staff position is that the focus of Section III.D.3 of Appendix J is on the maximum time period between Type C tests, not the plant's condition when the tests are performed. This position is illustrated in Section III.D.2 of Appendix J regarding Type B tests (for detection of local leakage of containment penetrations), where it states that Type B tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. From a safety standpoint, Type B and Type C tests are the same kinds of tests, performed on somewhat different types of containment isolation barriers; therefore, Type B and Type C tests can be treated similarly. Also, there is no reason to restrict Type C tests to refueling outages as long as the 2-year maximum interval is not exceeded. Based on the above, the NRC staff finds the basis for the licensee's proposed exemption from the requirement to perform the Type C tests during each reactor shutdown for refueling to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will not have a significant impact on the quality of the human environment (60 FR 45171). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–22463 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1995, 36.3 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 63.7 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 29, 1995.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 95–22388 Filed 9–8–95; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–36181; File No. SR–Amex–95–24]**

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Execution of Odd-Lot Market Orders

September 1, 1995.

On June 16, 1995, the American Stock Exchange, Inc. (''Amex'' 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 amend Amex Rule 205[3] to provide for the execution of odd-lot market orders[4] at a price based upon the Intermarket Trading System (''ITS'') best bid or offer, subject to certain conditions as described more fully below.

The proposed rule change was published for comment in the **Federal Register** on July 19, 1995.[5] No comments were received on the proposal.

The Exchange proposes to amend Amex Rule 205 in order to establish new odd-lot pricing procedures. The Commission initially approved the Exchange's current odd-lot pricing procedures as a pilot program in January 1989[6] and extended it eleven times since then.[7] Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amex Rule 205 pertains to the manner of executing odd-lot orders.

[4] An odd-lot market order is an order of less than a unit of trading to buy, sell, or sell short, that carries no further qualifying notations. The normal trading unit, or round-lot, is 100 shares.

[5] Securities Exchange Act Release No. 35963 (July 12, 1995), 60 FR 37112.

[6] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[7] *See* Securities Exchange Act Release Nos. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR–Amex–95–03); 34949 (Nov. 8, 1994), 59 FR 58863 (approving File No. SR–Amex–94–47); 34496 (Aug. 8, 1994), 59 FR 41807 (approving File No. SR–Amex–94–28); 33584 (Feb. 7, 1994), 59 FR 6983 (approving File No. SR–Amex–93–45); 32726 (Aug. 9, 1993), 58 FR 43394 (approving File No. SR–Amex–93–24); 31828 (Feb. 5, 1993), 58 FR 8434 (approving File No. SR–Amex–93–06); 30305 (Jan. 20, 1992), 57 FR 4653 (approving File No. SR–Amex–92–04); 29922 (Nov. 8, 1991), 56 FR 58409 (approving File No. SR–Amex–91–30); 29186 (May 19, 1991), 56 FR 22488 (approving File No. SR–Amex–91–09); 28758 (Jan. 10, 1991), 56 FR 1656 (approving File No. SR–Amex–90–39); 27590 (Jan. 5, 1990), 55 FR 1123 (approving File No. SR–Amex–89–31).

represented in the market either by being received at the trading post or through the Exchange's Post Execution Reporting (''PER'') system.[8] Also, for the purposes of the pilot program, limit orders that are immediately executable based on the Amex quote at the time the order is received at the trading post or through PER are executed in the same manner as market orders. Neither order type is charged an odd-lot differential.[9] Prior to the 1989 pilot program, odd-lot market orders were routed to a specialist and held in accumulation in the PER system or by the specialist until a round-lot execution in that security took place on the Exchange. Subsequent to the round-lot execution, the odd-lot order received the same price as the last Exchange round-lot transaction, plus or minus an odd-lot dealer differential.

In its previous orders, the Commission encouraged the Exchange to evaluate the feasibility of implementing an odd-lot pricing system based on the ITS best bid or offer.[10] The Commission was not satisfied that all customers were receiving the best execution, in terms of price and time, under the pilot procedures. In response, the Exchange, in its most recent request for an extension of the pilot program, stated that it has decided to proceed with systems modifications to provide for the execution of odd-lot market orders at the ITS best bid or offer, subject to certain conditions as hereinafter described, and that such system modifications should be completed by February 8, 1996.[11]

The Exchange now proposes to amend Amex Rule 205, which it intends to implement after the required systems modifications are completed. The proposed amendment provides generally for the execution of odd-lot market orders at the highest bid and lowest offer disseminated by the Amex or by another ITS participant market. In order to protect against the inclusion of incorrect or stale quotations when determining the highest bid and lowest offer, a quotation in a stock from another ITS market center will be considered only if: (1) The stock is included in ITS in that market center, (2) the size of the quotation is greater than 100 shares, (3) the bid or offer is no more than one-quarter dollar away from the bid or offer, respectively, disseminated by the Exchange, (4) the quotation conforms to the Exchange's requirements concerning minimum fractional changes,[12] (5) the quotation does not result in a ''locked market,''[13] (6) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (7) the bid or offer is ''firm'' pursuant to the Commission's and the market's rules.[14] If an ITS quotation from another market is not used because it fails to meet one of the above criteria, the best bid and offer disseminated by the Exchange will be used.

Where quotation information is not available (*e.q.*, when quotation collection or dissemination facilities are inoperable) odd-lot market orders would be executed at the prevailing Amex bid or offer or at a price deemed appropriate under prevailing market conditions. All odd-lot market orders entered prior to the opening of trading will continue to automatically receive the opening price, unless the Rule provides otherwise.[15] The pricing procedures will apply to market orders to buy on the offer and orders to sell on the bid marked ''long.'' The proposal will continue to prohibit odd-lot differentials for these transactions. Finally, these procedures also will apply to odd-lot executable limit orders.

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, with the requirements of Section 6 (b).[16] Specifically, the Commission believes the proposal is consistent with Section 6(b) (5) of the Act[17] because the Exchange's proposed pricing procedures for standard odd-lot market orders are designed to facilitate the execution and reporting of odd-lot transactions, assist in the prompt and accurate clearance and settlement of such transactions, perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission anticipates this proposal will ensure that customers receive the best execution, both in terms of price and time, for standard odd-lot market orders because such orders will be priced off a current market quote instead of a subsequent transaction. This should result in investors receiving more timely executions at the best prices then prevailing under current market conditions.

The Commission also believes it is reasonable for the Exchange to set certain requirements to trigger the use of the ITS best bid or offer in the odd-lot pricing system. The limited prerequisites for the use of the ITS quote are appropriate to protect the automatic execution feature of the odd-lot pricing system against the inclusion of aberrant quotations. Although the ITS quote remains the Commission's preferred method of pricing standard odd-lot orders, the Commission recognizes that the use of the ITS quote may not always be practicable for the Exchange. Therefore, the Commission believes, in the instances enumerated by the Exchange, it is appropriate to use the Amex best bid or offer. Moreover, even those few orders receiving only the Amex quote will be executed more cheaply than under the pre-1989 system because the Exchange's proposal continues to ensure that a differential is not charged for odd-lot market orders.

When the ITS best bid or offer is unavailable, the Commission believes it is acceptable for the Amex to price standard odd-lot market orders at the price of the last Exchange round-lot sale or at a price deemed appropriate under prevailing market conditions by the odd-lot dealer. In this way, the Exchange continue to provide procedures that facilitate the execution of odd-lot orders.

Finally, the Commission expects, based on the Exchange's representations, the required systems modifications will be completed by

[8] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248. The PER system provides member firms with the means to electronically transmit equity orders, up to volume limits specified by the Exchange, directly to the specialist's post on the trading floor of the Exchange. Securities Exchange Act Release No. 34869 (Oct. 20, 1994), 59 FR 54016.

[9] A differential is a charge paid by the customer to the specialist odd-lot dealer for executing the order.

[10] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[11] Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR–Amex–95–03). The Commission notes that the current odd-lot pilot program is scheduled to expire on February 8, 1996.

[12] Amex Rule 127 governs the Exchange's policy concerning minimum fractional changes for securities.

[13] According to Amex Rule 236(a)(4), a ''locked market'' occurs whenever the Exchange disseminates a bid for an ITS security at a price that equals or exceeds the price of the offer for the security then being displayed from another ITS participating market center or whenever the Exchange disseminates an offer for an ITS security at a price that is less than the price of the bid for the security then being displayed from another ITS participating market center.

[14] The Exchange considers a bid or offer as ''firm'' when the members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the ''unusual market'' exception of paragraph (b)(3) of Rule 11Ac1–1. *See* 17 CFR 240.11Ac1–1(b)(3); 17 CFR 240.11Ac1–1(c)(2).

[15] *See* Amex Rule 205 (c) (1) (''Orders Filled After the Close'') and Amex Rule 205 (c) (2) (''Non-Regular Way Trades'').

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f (b) (5).

February 8, 1996. The Commission also expects the Exchange to notify the Commission staff of such completion and the implementation of this proposal.

*It Therefore Is Ordered*, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–95–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-22392 Filed 9-8-95; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34–36180; File No. SR–CHX–95–20]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Technical Corrections to Its Enhanced SuperMAX Rules

September 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 August 25, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 37(e) of Article XX, relating to its Enhanced SuperMAX Program.

### 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

In Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465 (Aug. 2, 1995) (File No. SR–CHX–95–15), the CHX added rules for the Enhanced SuperMAX Program into CHX Article XX, Rule 37(e). The purpose of this proposed change is to make technical changes to Rule 37(e) to correct inadvertent errors contained in the prior filing. Specifically, Rule 37(e)(1) and (2) are being changed to make it clear that they refer to stopped orders [1] and not stop orders,[2] among other things.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments too and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on competition*

The proposed rule change will impose no burden on competition.

*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

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 and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such 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 Exchange. All submissions should refer to File No. SR–CHX–95–20 and should be submitted by October 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–22391 Filed 9–8–95;8:45am]

BILLING CODE 8010–01–M

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## DEPARTMENT OF TRANSPORTATION

## Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 1, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the

[18] 15 U.S.C. 78s (b) (2).

[19] 17 CFR 200.30–3 (a) (12).

[1] For purposes of the Enhanced SuperMAX program, an order is ''stopped'' if an agency market order would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the consolidated best bid or offer. Once an order is stopped, a buy (sell) order is guaranteed at least the offer (bid) price prevailing at the time of the stop (''stopped price''), and the Enhanced SuperMAX program will provide the order with an opportunity for price improvement.

[2] Generally, a stop order is an order to buy or sell at the market price once the security has traded at a specified price (''stop price'').

application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–95–486

*Date filed:* August 28, 1995

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* September 25, 1995

*Description:* Application of Aviateca, S.A., pursuant to 49 U.S.C. 41302 and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit, to engage in foreign air transportation of persons, property, and mail as conferred in Order 90–8–58: 1. Between a point(s) in Guatemala and the terminal point Miami, Florida; 1. Between a points(s) in Guatemala; the intermediate points Cancun and Merida, Mexico; and the coterminal points New Orleans, Louisiana; Houston, Texas; and Dallas/Ft. Worth, Texas; 3. Between a point(s) in Guatemala; the intermediate point Santo Domingo, Dominican Republic; and the terminal point San Juan, Puerto Rico. 4. The authority to engage in charter trips.

**Paulette V. Twine,**

*Chief Documentary Services Division.*

[FR Doc. 95–22482 Filed 9–8–95; 8:45 am]

BILLING CODE 4910–62–P

## Federal Aviation Administration

## Receipt of Noise Compatibility Program and Request for Review; Savannah International Airport, Savannah, GA

**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 for Savannah International Airport 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 by the Savannah Airport Commission. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Savannah International Airport were in compliance with applicable requirements effective August 23, 1993. The proposed noise compatibility program will be approved or disapproved on or before February 25, 1996.

**EFFECTIVE DATE:** The effective date of the start of FAA's review of the noise compatibility program is August 29, 1995. The public comment period ends October 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cathy Nelmes, FAA/Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747. 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 Savannah International Airport which will be approved or disapproved on or before February 25, 1996. 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 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 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 Savannah International Airport, effective on August 29, 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 February 25, 1996.

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, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

Mr. Patrick S. Graham, Savannah International Airport, 400 Airways Avenue, Savannah, GA 31408.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Atlanta, Georgia, on August 29, 1995.

**Dell T. Jernigan,**

*Manager, Atlanta Airports District Office Southern Region.*

[FR Doc. 95–22483 Filed 9–8–95; 8:45 am]

BILLING CODE 4910–13–M

## Research, Engineering and Development Advisory Committee; Security R&D Subcommittee

Pursuant to Section 10(A) (2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Scientific Advisory Panel of the Security R&D Subcommittee of the Research, Engineering and Development Advisory Committee on Friday, October 20, 1995, from 8:30 a.m. to 4:00 p.m. The meeting will take place in the Aviation Security Laboratory, Federal Aviation Administration (FAA) Technical Center, Atlantic City Airport, New Jersey.

The agenda will include an R&D overview and report on recent developments; discussion on development of trace detection standards; aircraft and container hardening developments; and a laboratory tour.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or to access the FAA Technical Center to attend the meeting should contact Dr. Lyle Malotky, the

Panel's Designated Federal Official, FAA/ACS–20, 800 Independence Avenue SW., Washington, DC 20591 (202) 267–3967.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 5, 1995.

**Andres G. Zellweger,**

*Executive Director, Research, Engineering and Development Advisory Committee.*

[FR Doc. 95–22484 Filed 9–8–95; 8:45 am]

BILLING CODE 4910–13–M

## Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development Advisory Committee. The meeting will be held on October 12 and 13, 1995, at the Holiday Inn Fair Oaks, 11787 Lee Jackson Highway, Fairfax, Virginia.

On Thursday, October 12, the meeting will begin at 8 a.m. and end at 5 p.m. On Friday, October 13, the meeting will begin at 8:00 a.m. and end at 1:00 p.m. The meeting agenda includes an update on the National Science and Technology Council report, and update on subcommittee activities, and a briefing on the Oceanic Program and the General Aviation Program.

Attendance is open to the interested public but limited to space available. With the approval of the committee chair, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, or obtain information, should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 5, 1995.

**Andres G. Zellweger,**

*Executive Director, Research, Engineering and Development Advisory Committee.*

[FR Doc. 95–22485; Filed 9–8–95; 8:45 am]

BILLING CODE 4910–13–M

# DEPARTMENT OF THE TREASURY

## Public Information Collection Requirements Submitted to OMB for Review

August 28, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0096.

*Form Number:* IRS Forms 1042 and 1042–S.

*Type of Review:* Extension.

*Title:* Annual withholding Tax Return for U.S. Source Income of Foreign Persons, Foreign Person's U.S. Source Income Subject to Withholding.

*Description:* Used by withholding agents to report tax withheld at source in payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The Service uses this information to verify that the correct amount of tax has been withheld and paid to the U.S.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 22,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 1042 | Form 1042–S |
|---|---|---|
| Recordkeeping | 6 hr., 28 min | 5 hr., 1 min. |
| Learning about the law or the form | 1 hr., 56 min | 3 hr., 21 min. |
| Preparing the form | 3 hr., 59 min | 4 hr., 31 min. |
| Copying, assembling, and sending the form to the IRS | 32 min | 16 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 21,324,020 hours.

*OMB Number:* 1545–0619.

*Form Number:* IRS Form 6765.

*Type of Review:* Revision.

*Title:* Credit for Increasing Research Activities.

*Description:* Internal Revenue Code (IRC) section 38 allows a credit allows a credit against income tax (determined under IRC section 41) for an increased in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 13,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—6 hr., 13 min.

Learning about the law or the form—1 hr., 0 min.

Preparing and sending the form to the IRS—1 hr., 8 min.

*Frequency of Response:* On Occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 108,680 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service room 5571, 1111 Constitution Avenue, N.W. Washington, DC 20224

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR. Doc. 95–22394 Filed 9–8; 8:45 am]

Billing Code 4830–01–M

## Public Information Collection Requirements submitted to OMB for Review

August 28, 1995,

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1415 New York Avenue, NW., Washington, DC 20220.

### Bureau of Alcohol, Tobacco and Firearms (BATF)

*OMB Number:* New.

*Form Number*: ATF F 1676 (5110.12).
*Type of Review*: New collection.
*Title*: Bond Covering Removal To and Use Of Wine At Vinegar Plant.
*Description*: ATF F 1676 (5510.2) is a bond form which serves as a contract between the proprietor of a vinegar plant and a surety. The bond coverage stated on the form is in an amount sufficient to cover the federal excise tax on wine in transit to and stored on the vinegar plant until and wine becomes vinegar.
*Respondents*: Business or other for-profit.
*Estimated Number of Respondents*: 25.
*Estimated Burden Hours Per Respondent*: 1 hour.
*Frequency of Response*: Annually.
*Estimated Total Reporting Burden*: 25 hours.

*OMB Number*: 1512–0081.
*Form Number*: ATF F 5130.22 and ATF F 5130.23.
*Type of Review*: Revision.
*Title*: Brewer's Bond (5130.22); and Brewer's Bond Continuation Certificate (5130.23).
*Description*: The Brewer's Bond, AFT Form 5130.22 is executed by a brewer and surety company to ensure payment of excise tax on beer removed from the brewery. The Continuation Certificate, ATF F 5130.23 is executed by a brewer and surety company to continue in effect the coverage of a Brewer's Bond by the surety company.
*Respondents*: Business or other for-profit.
*Estimated Number of Respondents*: 280.
*Estimated Burden Hours Per Respondent*: 1 hour.
*Frequency of Response*: Other (every four years).
*Estimated Total Reporting Burden*: 280 hours.

*OMB Number*: 1512–0378.
*Form Number*: ATF F 1730 (5530.3) and ATF REC 5530/1.
*Type of Review*: Revision.
*Title*: Applications and Notices—Manufacturers of Nonbeverage Products.
*Description*: Reports (applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.
*Estimated Number of Respondents*: 640.
*Estimated Burden Hours Per Respondent*: 30 minutes.
*Frequency of Response*: On occasion.
*Estimated total Reporting Burden*: 640 hours.

*Clearance Officer*: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
*OMB Reviewer*: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 95–22395 Filed 9–8–95; 8:45 am]
BILLING CODE 4810 31–M

## Public Information Collection Requirements Submitted to OMB for Review

August 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

### Departmental Offices/Office of Procurement

*OMB Number:* 1505–0080.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Post-Contract Award Information.
*Description:* Information requested of contractors is specific to each contract and is required for Treasury to evaluate properly the progress made and/or management controls used by contractors providing supplies or services to the Government and to determine contractors' compliance with the contracts, in order to protect the Government's interest.
*Respondents:* Business or other for-profit, Not-for-profit institutions.
*Estimated Number of Respondents:* 5,565.
*Estimated Burden Hours Per Response:* 15 hours, 32 minutes.
*Frequency of Response:* On occasion (as specified in contract).
*Estimated Total Reporting Burden:* 86,421 hours.

*OMB Number:* 1505–0081.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Solicitation of Proposal Information for Award of Public Contracts.
*Description:* Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to evaluate properly the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals are most advantageous to the Government, price and other factors considered.
*Respondents:* Business or other for-profit, Not-for-profit institutions.
*Estimated Number of Respondents:* 29,183.
*Estimated Burden Hours Per Response:* 34 hours, 27 minutes.
*Frequency of Response:* Other (one-time response).
*Estimated Total Reporting Burden:* 1,005,241 hours.
*Clearance Officer:* Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 95–22396 Filed 9–8–95; 8:45 am]
BILLING CODE 4810–25–M

## Public Information Collection Requirements Submitted to OMB for Review

August 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
*Special Request:* The Department of the Treasury has requested Office of Management and Budget (OMB) review and approval of the information collection described below by August 31, 1995.

### Departmental Offices/Office of Procurement

*OMB Number:* 1505–0107.

*Form Number:* None.

*Type of Review:* Reinstatement.

*Title:* Regulation on Agency Protests.

*Description:* Information requested of contractors so that the Government will be able to evaluate protested effectively and provide prompt resolution of issues in dispute when contractors file agency-level protests.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 17.

*Estimated Burden Hours Per Response:* 2 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 34 hours.

*Clearance Officer:* Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 95–22397 Filed 9–8–95; 8:45 am]

BILLING CODE 4810–25–M

## Public Information Collection Requirements Submitted to OMB for Review

August 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Internal Revenue Service (IRS)

*OMB Number*: New.

*Form Number*: IRS Form 1040NR–EZ.

*Type of Review*: New collection.

*Title*: U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.

*Description*: This form is used by certain nonresident aliens with no dependents to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc. are correctly figured.

*Respondents*: Individuals or households.

*Estimated Number of Respondents/Recordkeepers*: 135,500.

*Estimated Burden Hours Per Respondent/Recordkeeper*:

Recordkeeping—1 hr., 19 min.

Learning about the law or the form—48 min.

Preparing the form—1 hr., 30 min.

Copying, assembling, and sending the form to the IRS—35 min.

*Frequency of Response*: Annually.

*Estimated Total Reporting/Recordkeeping Burden*: 567,745 hours.

*OMB Number*: New.

*Form Number*: IRS Forms 9779, 9780, 9781, 9782, 9783, 9784, 9785, 9786, 9787, 9788, 9789 and 9790.

*Type of Review*: New collection.

*Title*: Electronic Federal Tax Payment System (EFTPS).

1. EFTPS Business Enrollment Form (9779);
2. EFTPS Business Enrollment Form (Spanish Version) (9780);
3. EFTPS Mandated Taxpayers and Subsidiaries Enrollment Form (9781);
4. EFTPS Mandated Taxpayers and Subsidiaries Enrollment Form (Spanish Version) (9782);
5. Individual Taxpayer Enrollment Form (9783);
6. Individual Taxpayer Enrollment Form (Spanish Version) (9784);
7. EFTPS Mandated Taxpayers and Subsidiaries Enrollment—Confirmation/Update Form (9785);
8. EFTPS Mandated Taxpayers and Subsidiaries Enrollment—Confirmation/Update Form (Spanish Version) (9786);
9. EFTPS Business Enrollment Confirmation/Update Form (9787);
10. EFTPS Business Enrollment Confirmation/Update Form (Spanish Version) (9788);
11. Individual Enrollment Confirmation/Update Form (9789); and
12. Individual Enrollment Confirmation/Update Form (Spanish Version) (9790).

*Description*: Enrollment is vital to the implementation of the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service will use to accept electronically transmitted federal tax payments. This system is a necessary outgrowth of advanced information and communication technologies. It is also an outgrowth of the current TAXLINK system in Atlanta.

*Respondents*: Business or other for-profit, Individuals or households, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers*: 11,640,000.

*Estimated Burden Hours Per Respondent/Recordkeeper*:

| Form No. | Response time |
|---|---|
| 9779 | 20 min. |
| 9780 | 20 min. |
| 9781 | 20 min. |
| 9782 | 20 min. |
| 9783 | 20 min. |
| 9784 | 20 min. |
| 9785 | 20 min. |
| 9786 | 20 min. |
| 9787 | 20 min. |
| 9788 | 20 min. |
| 9789 | 20 min. |
| 9790 | 20 min. |

*Frequency of Response*: Annually.

*Estimated Total Reporting/Recordkeeping Burden*: 3,879,630 hours.

*OMB Number*: 1545–1277.

*Form Number*: IRS Form 1040–TEL.

*Type of Review*: Revision.

*Title*: TeleFile.

*Description*: Form 1040EZ filers who are single with no dependents, and whose IRS mail label has not changed, will be given the option to file their return by telephone, with no return to send in to the IRS. The IRS will use the information obtained to compute the taxpayer's refund or balance due.

*Respondents*: Individuals or households.

*Estimated Number of Respondents/Recordkeepers*: 3,450,000.

*Estimated Burden Hours Per Respondent/Recordkeeper*:

Recordkeeping—7 min.

Learning about the law or the worksheet—4 min.

Preparing the worksheet—16 min.

TeleFile phone call—20 min.

*Frequency of Response*: Annually.

*Estimated Total Reporting/Recordkeeping Burden*: 2,725,500 hours.

*Clearance Officer*: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer*: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 95–22398 Filed 9–8–95; 8:45 am]

BILLING CODE 4830–01–M

## Publication Information Collection Requirements Submitted to OMB for Review

September 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Internal Revenue Service (IRS)

*OMB Number:* New.
*Form Number:* IRS Form 1040–T.
*Type of Review:* New collection.
*Title:* U.S. Individual Income Tax Return.

*Description:* This form is used by individuals to report their income subject to income tax ad to compute their correct tax liability. The data are used to verify that the income reported on the form is correct and are also used for statistics.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 500,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS |
|---|---|---|---|---|
| 1040–T | 2 hr., 31 min. | 2 hr., 54 min. | 5 hr., 30 min. | 1 hr., 26 min. |
| Section A | 0 min. | 10 min. | 20 min. | 10 min. |
| Section B | 1 hr., 25 min. | 11 min. | 58 min. | 24 min. |
| Section C | 0 min. | 1 min. | 8 min. | 10 min. |
| Section D | 20 min. | 16 min. | 32 min. | 20 min. |
| Section EIC | 0 min. | 5 min. | 4 min. | 10 min. |

*Frequency of Response:* Annually.
*Estimated Total Reporting/Recordkeeping Burden:* 6,121,610 hours.
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 95–22399 Filed 9–8–95; 8:45 am]

BILLING CODE 4830–01–M

# Sunshine Act Meetings

Federal Register

Vol. 60, No. 175

Monday, September 11, 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).

## DEPARTMENT OF ENERGY

## FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

**DATE AND TIME:** September 13, 1995, 10 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note—**Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro; 636th Meeting—September 13, 1995, Regular Meeting (10:00 a.m.)**

CAH–1.
Docket #P–2311,016, James River—New Hampshire Electric, Inc.
CAH–2.
Docket #P–2360,026, Minnesota Power and Light Company
CAH–3.
Docket #P–3038,072, Oklahoma Municipal Power Authority
CAH–4.
Docket #P–8144,004, Amador County
CAH–5.
Docket #P–10684,010, Lansing Board of Water and Light
CAH–6.
Docket #P–11521,001, Skokomish Indian Tribe
CAH–7.
Omitted
CAH–8.
Docket #P–10551,036, City of Oswego, New York
CAH–9.
Docket #P–10900,000, Thomas Hodgson & Sons, Inc.
Other #s P–10900,007, Thomas Hodgson & Sons, Inc.
CAH–10.
Docket #P–11076,000, City of Tacoma, Washington
Other #s P–2016,018, City of Tacoma, Washington

**Consent Agenda—Electric**

CAE–1.
Docket #ER95–207,000, Peco Energy Company
CAE–2.
Docket #ER93–730,000, Wholesale Power Services, Inc.
CAE–3.
Omitted
CAE–4.
Docket #ER94–465,000, Beebee Island Corporation
CAE–5.
Docket #ER94–1045,000, Kansas City Power & Light Company
Other #s ER94–1045,001, Kansas City Power & Light Company
ER94–1045,002, Kansas City Power & Light Company
CAE–6.
Docket #ER95–39,000, Potomac Edison Company
Other #s ER95–39,001, Potomac Edison Company
CAE–7.
Docket #ER95–288,000, Central Maine Power Company
CAE–8.
Docket #ER95–64,000, South Carolina Electric & Gas Company
Other#s EL95–15,000, South Carolina Electric & Gas Company
ER95–64,001, South Carolina Electric & Gas Company
CAE–9.
Docket #ER95–267,004, New England Power Company
Other#s EL95–25,004, New England Power Company
ER95–25,005, New England Power Company
ER95–267,005, New England Power Company
CAE–10.
Docket #ER95–457,001, Florida Power Corporation
Other#s ER95–457,000, Florida Power Corporation
CAE–11.
Omitted
CAE–12.
Omitted
CAE–13.
Docket #EL91–13,003, Northern States Power Company (Minnesota) V. Southern Minnesota Municipal Power Agency (SMMPA)
CAE–14.
Docket #EL95–41,001, Metropolitan Edison Company and Pennsylvania Electric Company
CAE–15.
Docket #ER94–478,001, Medina Power Company
Other#s EL94–87,001, Medina Power Company
CAE–16.
Docket #ER84–560,037, Union Electric Company
CAE–17.
Docket #ER95–980,001, Pacific & Electric Company
CAE–18.
Docket #ER95–1529,001, Mid-Continent Area Power Pool
Other#s EL95–77,000, Mid-Continent Area Power Pool
ER95–1529,002, Mid-Continent Area Power Pool
CAE–19.
Docket #ER94–1612,003, Destic Power Services, Inc.
CAE–20.
Docket #EG95–66,000, PMDC Energia Ltd.
CAE–21.
Docket #EG95–67,000, OPDB, Ltd.
CAE–22.
Docket #EG95–68,000, Ogden Power Development of Bolivia, Inc.
CAE–23.
Docket #EG95–69,000, The Bolivian Generating Group, L.L.C.
CAE–24.
Docket #EG95–70,000, C&O Bolivia
CAE–25.
Docket #EG95–63,000, EI Power, Inc.
CAE–26.
Docket #EG95–64,000, EI International
CAE–27.
Docket # EG95–65,000, EI Barranquilla, Inc.
CAE–28.
Docket # EG95–61,000, Empresa Guaracachi S.A.
CAE–29.
Docket #EL93–42,000, Towns and Cities of Clayton and Lewes, Delaware v. Delmarva Power & Light Company
CAE–30.
Docket #EL95–35,000, Kootenai Electric Cooperative, Inc. v. et al. v. Public Utility District of No. 2 of Grant County, Washington
CAE–31.
Docket #EL94–72,000, North Little Rock Cogeneration, L.P., et al., Entergy Services, Inc. and Arkansas Power and Light Co.
Other#s ER94–1128,001, Entergy Services, Inc.
CAE–32.
Docket # EL91–43,000, Southern Minnesota Municipal Power Agency v. Northern States Power Company (Minnesota)
CAE–33.
Omitted

**Consent Agenda—Gas and Oil**

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.

Docket # RP95–242,004, Natural Gas Pipeline Company of America
CAG–4.
Docket # PR95–419,000, Pacific Gas Transmission Company
CAG–5.
Docket # PR93–4,000, Transok, Inc.
Other#s PR93–4,001, Transok, Inc.
Other#s PR93–4, 002, Transok, Inc.
CAG–6.
Docket # PR94–2,000, Enron Storage Company
CAG–7.
Omitted
CAG–8.
Docket # RP94–119 et al., 002, Texas Gas Transmission Corporation
CAG–9.
Docket # RP94–161,004, U–T Offshore System
CAG–10.
Docket # RP94–162,003, High Island Offshore System
CAG–11.
Docket # RP95–88,002, Tennessee Gas Pipeline Company
Other#s RP95–63,001, Tennessee Gas Pipeline Company
RP95–112,009, Tennessee Gas Pipeline Company
RP95–396,000, Tennessee Gas Pipeline Company
CAG–12.
Docket # RP95–381,000, Tennessee Gas Pipeline Company
CAG–13.
Docket # TM95–5–34,000, Florida Gas Transmission Company
CAG–14.
Docket # RP94–221,002, ANR Pipeline Company
CAG–15.
Docket #RP94–352,002, Western Gas Interstate Company
CAG–16.
Ommitted.
CAG–17.
Docket #RP95–217,001, Trunkline Gas Company
Other #S RP95–217,000, Trunkline Gas Company
RP95–220,000, Trunkline Gas Company
CAG–18.
Docket #RP95–339,000, Natural Gas Pipeline Company of America
Other #S RP95–536,000, Columbia Gulf Transmission Company
CP95–555,000, Natural Gas Pipeline Company of America
CAG–19.
Docket #RP95–362,000, Koch Gateway Pipeline Company
CAG–20.
Docket #RP95–399,000, Koch Gateway Pipeline Company
CAG–21.
Docket #RP93–206,008, Northern Natural Gas Company
CAG–22.
Docket #RP95–185,005, Northern Natural Gas Company
CAG–23.
Docket #RP91–203,057, Tennessee Gas Pipeline Company
CAG–24.
Docket #RP95–246,001, Southern Natural Gas Company
CAG–25.
Docket #RP95–190,001, Williams Natural Gas Company
Other #S RP95–190,000, Williams Natural Gas Company
RP95–190,002, Williams Natural Gas Company
CAG–26.
Docket #RP95–143,002, Northwest Pipeline Corporation
CAG–27.
Docket # RP95–98,001, Columbia Gas Transmission Corporation
Other #S CP95–186,001, Tennessee Gas Pipeline Company
CP95–231,001, Ozark Gas Transmission System
CP95–232,001, Ozark Gas Transmission System
RP95–144,001, Tennessee Gas Pipeline Company
CAG–28.
Docket # OR91–1,001, Kerr-McGee Refining Corp. and Texaco Refining and Marketing, Inc. v. Williams Pipe Line Company
CAG–29.
Docket #RP95–22,001, ANR Pipeline Company
CAG–30.
Docket # RP95–15,005, Texas Eastern Transmission Corporation
CAG–31.
Docket #RP94–197,004, Tennessee Gas Pipeline Company
Other #S RP93–151,018, Tennessee Gas Pipeline Company
CAG–32.
Docket #OR95–8,000, Williams Pipe Line Company
CAG–33.
Docket #GP90–11,003, Nicor Exploration Company
CAG–34.
Docket #GP95–7,000, Williams Natural Gas Company v. Oxy USA, Inc.
CAG–35.
Docket #OR95–33,000, Yellowstone Pipe Line Company
CAG–36.
Docket #CP94–775,002, Tennessee Gas Pipelien Company
CAG–37.
Docket #CP88–105,003, Yukon Pacific Company L.P.
CAG–38.
Omitted
CAG–39.
Docket #CP94–806,001, Tennessee Gas Pipeline Company
CAG–40.
Docket #PR95–11,000, Egan Hub Partners, L.P.
CAG–41.
Docket #CP95–118,000, East Tennessee Natural Gas Company
CAG–42.
Docket #CP95–228,000, Mississippi River Transmission Corporation
CAG–43.
Docket #CP93–566,000, ANR Pipeline Company
Other #SCP93–566,001, ANR Pipeline Company

CP93–566,002, ANR Pipeline Company
CAG–44.
Docket #CP95–588,000, Pacific Interstate Offshore Company
CAG–45.
Omitted
CAG–46.
Docket #CP95–552,000, Seagull Natural Gas Company
CAG–47.
Docket #CP94–771,000, Ashland Exploration, Inc.

Other #SCP94–757,000, CNG Transmission Corporation
CAG–48.
Docket #CP88–391,016, Transcontinental Gas Pipeline Corporation
CAG–49.
Docket #CP94–183,000, EL Paso Natural Gas Company

Other #SCP94–183,001, El Paso Natural Gas Company
CAG–50.
Docket #CP95–475,000, El Paso Natural Gas Company
CAG–51.
Docket #RP93–89,002, MIGC, Inc.

**Hydro Agenda**

H–1.
Reserved

**Electric Agenda**

E–1.
Reserved

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
Reserved

*II. Pipeline Certificate Matters*

PC–1.
Reserved

Dated: September 6, 1995.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–22582 Filed 9–7–95; 1:52 pm]

BILLING CODE 6717–01–P

**FARM CREDIT ADMINISTRATION**

## Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 12, 1995, from 2:15 p.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, 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:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. 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**

*Approval of Minutes*

**Closed Session ***

*A. New Business*

Enforcement Actions

*B. Reports*

OSMO Quarterly Report

Dated September 5, 1995.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

[FR Doc. 95–22555 Filed 9–7–95; 11:08 am]

BILLING CODE 6705–01–P

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**TIME AND DATE:** 9 a.m. (EDT), September 18, 1995.

**PLACE:** 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the August 21, 1995 Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of FY 1995 expenditures, approval of FY 1996 proposed budget, and FY 1997 estimates.
4. Proposed 1996 Board meeting schedule.

**CONTACT PERSON FOR MORE INFORMATION:** Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 6, 1995.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 95–22558 Filed 9–7–95; 11:09 am]

BILLING CODE 6760–01–M

**UNITED STATES INSTITUTE OF PEACE**

**DATE/TIME:** Thursday, September 21, 1995—9:00 a.m.–5:30 p.m.

**LOCATION:** 1550 M Street, NW., Lobby Conference Room, Washington, DC 20005.

**STATUS:** (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

**AGENDA:** September Board Meeting, Approval of Minutes of the Seventy-first Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Fiscal Years 1996 and 1997 Budget Review; Unsolicited Grants and Fellowships.

**CONTACT:** Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: September 7, 1995.

**Charles E. Nelson,**

*Vice President, United States Institute of Peace.*

[FR Doc. 95–22607 Filed 9–7–95; 1:53 pm]

BILLING CODE 6820–AR–M

# Corrections

**Federal Register**

Vol. 60, No. 175

Monday, September 11, 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.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 176

**[Docket No. 91–F–0339]**

### Indirect Food Additives: Paper and Paperboard Components

*Correction*

In final rule document 95–16092 beginning on page 34134 in the issue of Friday, June 30, 1995, make the following correction:

On page 34134, in the second column, in the **DATES** section, August 29, 1995 should read July 31, 1995.

**BILLING CODE 1505–01–D**

federal register

Monday
September 11, 1995

# Part II

# Office of Government Ethics

## 5 CFR Part 2640

## Interpretation, Exemptions and Waiver Guidance Concerning Acts Affecting a Personal Financial Interest; Proposed Rule

**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Part 2640**

**RIN 3209–AA09**

## Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Government Ethics is issuing a proposed regulation describing circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived. Section 208(a) prohibits employees of the executive branch from participating in an official capacity in particular matters in which they, or certain persons or entities with whom they have specified relationships, have a financial interest. Section 208(b) of title 18 permits waivers of these prohibitions in certain cases. Section 208(b)(1) permits agencies to exempt employees on a case-by-case basis from the disqualification provisions of section 208(a). Similarly, section 208(b)(3) permits agencies to waive, in certain cases, the disqualification requirement that would apply to special Government employees serving on a Federal advisory committee. Finally, under section 208(b)(2), the Office of Government Ethics has the authority to promulgate executive branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a). This proposed regulation describes those financial interests. It also proposes to provide guidance to agencies on the factors to consider when issuing individual waivers under section 208(b)(1) or (b)(3).

**DATES:** Comments by agencies and the public are invited and are due by November 13, 1995.

**ADDRESSES:** Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Attention: Ms. Glynn.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Glynn, Office of Government Ethics, telephone 202–523–5757, FAX 202–523–6325.

**SUPPLEMENTARY INFORMATION:** Section 208 of title 18 of the United States Code was enacted in 1962 as part of a general revision of the criminal statutes dealing with bribery, graft, and conflicts of interest. It was the successor to 18 U.S.C. 434, a statute enacted in the Civil War era, which prohibited a Government employee from transacting business for the Government with any business entity in which the employee held a financial interest. Since it became effective in 1963, 18 U.S.C. 208(a) has prohibited an employee of the executive branch from participating in an official capacity in any particular matter in which, to his knowledge, he or other specified persons or organizations, has a financial interest. As originally enacted, section 208(b) provided for certain exceptions to the disqualification mandated by section 208(a). Under 18 U.S.C. 208(b)(1), in individual cases a determination could be made by the official responsible for the employee's appointment that the employee could act in matters in which he or other specified individuals or entities had a financial interest because the interest was not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Under 18 U.S.C. 208(b)(2), each agency had the authority to determine, by regulation, that certain financial interests were too remote or too inconsequential to affect the integrity of the services of that agency's employees. These regulatory ''waivers'' permitted all employees of the particular agency to act in Government matters in which their only financial interest was one of the type specified in the regulation.

The Ethics Reform Act of 1989 (Pub. L. No. 101–94), as amended, (''the Act''), amended 18 U.S.C. 208 to eliminate the authority of individual agencies to adopt agencywide exemptions from the applicability of section 208(a). Instead, section 208(d)(2) directs the Office of Government Ethics, after consultation with the Attorney General, to adopt uniform regulations exempting financial interests from the applicability of section 208(a) for all or a portion of the executive branch if OGE determines that such interests are either too remote or too inconsequential to affect an employee's services to the Government. The Office of Government Ethics has consulted with the Office of Personnel Management and the Department of Justice, and pursuant to section 201(c) of Executive Order 12674, as modified by E.O. 12731, has obtained the concurrence of the Justice Department.

The Office of Government Ethics is separately publishing in the **Federal Register** an interim regulation, effective upon publication, establishing a single exemption under 18 U.S.C. 208(b)(2) for disqualifying financial interests that arise from Federal Government salary and benefits or from Social Security or veterans' benefits. That exemption is being issued for codification on interim basis at § 2640.101 of 5 CFR. However, when this proposed overall section 208 regulation is ultimately issued as a final regulation, the exemption for certain Federal Government employment-related financial interests will be moved and placed with the miscellaneous exemptions described in § 2640.203. Therefore, the exemption being established in the separate interim regulation is also being republished as part of this proposed regulation for eventual codification at 5 CFR 2640.203(d). Section 2640.101 of this proposed regulation sets forth a general discussion of the purpose of the overall regulation.

Although individual agencies no longer have the authority to issue agency-specific general exemptions, previously issued agency regulatory ''waivers'' continue to apply until this proposed regulation is adopted as a final rule and becomes effective. When effective, this rule will supersede all agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989. *See* 5 CFR 2635.402(d)(2). As proposed, this regulation would protect employees who acted in reliance on such ''waivers'' issued by agencies prior to the effective date of the final regulation. Employees who acted in reliance on such an agency regulatory waiver in effect prior to the effective date of the final version of this regulation would be deemed to have acted in accordance with applicable authority.

This proposed regulation describes those holdings or relationships that give rise to financial interests that OGE has determined are either too remote or too inconsequential in value to be likely to affect an employee's consideration of any particular matter. Employees who have these disqualifying financial interests would be permitted, to the extent described in the regulation, to participate in matters affecting such interests notwithstanding the general prohibition in section 208(a).

Section 208, as amended, still authorizes agencies to issue individual waivers to employees on a case-by-case basis under section 208(b)(1). The determinations required by section 208 for issuance of an individual waiver are unchanged from previous statutory requirements. Section 208(b)(1) provides that an individual waiver may be issued if the official responsible for the officer's or employee's appointment determines that the interest in the matter ''is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee.'' This proposed regulation provides guidance to agencies in making such determinations by listing factors

agencies should consider before granting a waiver.

In addition, section 208, as amended, gives agencies specific authority concerning disqualifying financial interests held by special Government employees serving on, or being considered for appointment to, advisory committees within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app. After reviewing the financial disclosure statement required by the Ethics in Government Act of 1978 to be filed by such an individual, the official responsible for the employee's appointment can ''waive'' the individual's disqualifying financial interest by certifying that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest created by the financial interest involved. This proposed regulation would describe the factors an agency is to consider in determining whether a waiver should be granted under section 208(b)(3).

Since section 208 became effective in 1963, agency ethics officials have often used the term ''waiver'' to describe exceptions to the prohibition authorized under either section 208(b)(1) or (b)(2). This proposed rule uses the term ''exemption'' to describe regulatory exceptions authorized by OGE under section 208(b)(2), and ''waiver'' to describe individual exceptions granted under section 208 (b)(1) or (b)(3). The Office of Government Ethics believes the term ''exemption'' more accurately describes the fact that section 208(b)(2) permits OGE to ''exempt'' certain financial interests from the prohibition in section 208(a).

**I. Scope of 18 U.S.C. 208(a)**

Section 208(a) prohibits an officer or employee of the executive branch, or an officer or employee of an independent agency of the United States, or a Federal Reserve bank director, officer or employee, or an officer or employee of the District of Columbia, including a special Government employee, from participating personally and substantially in an official capacity

through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, in which to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest * * *.

18 U.S.C. 208(a).

An employee has a financial interest in a particular matter ''when there is a real possibility that he might gain or lose as a result of developments in or resolution of the matter.'' 83 OGE 1, at 2 (Jan. 7, 1983), published in the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics 1979–1988 (OGE Advisory Publication), pp. 859, 861. The statute does not require that the amount of gain or loss be of any particular size, or likelihood. ''All that is required is that there be a real, as opposed to a speculative, possibility of benefit or detriment.'' *Id.* Section 208(a) has long been interpreted as applying where the matter will have a ''direct and predictable effect'' on the employee's financial interest or on the financial interests of other persons or entities specified in the statute. *See, e.g.,* 2 Opinions of the Office of the Legal Counsel 151, 155 (June 29, 1978). In this regulation, the financial interests of the employee and of the other individuals and entities specified in section 208 would be referred to as the employee's ''disqualifying financial interests.''

The meaning of the term ''financial interest'' is sometimes misunderstood. As used in section 208, the term ''financial interest'' refers to the possibility of financial gain or loss as a result of action on a matter. For example, if an employee is owed money by a person who is a party to an agency matter, the loan itself is not a ''financial interest'' within the meaning of section 208. Instead, the employee's financial interest in the matter arises from the possibility that the matter may have an effect on the debtor's ability or willingness to honor his obligation to pay the debt owed to the employee. The loan would be a disqualifying financial interest under section 208 only if the agency matter would have a direct and predictable effect on the debtor's ability or willingness to repay the loan.

Similarly, an employee may have a savings account in a financial institution which conducts business at the employee's agency. While the employee ordinarily would be viewed as having a ''financial interest'' in the deposits in his savings account, the employee's involvement in agency matters affecting the financial institution would not necessarily affect his financial interest in the savings account. In fact, in most such cases, the employee would not have a disqualifying financial interest within the meaning of section 208 because the agency matter in which the employee would participate would not result in any gain or loss to his savings account. He would be disqualified from acting in matters affecting the financial institution only if the matter would have a direct and predictable effect on his financial interest in his savings account. Even in the unusual case where the matter would have a direct and predictable effect on the employee's savings account, a portion or all of many such accounts may be insured by the Federal Deposit Insurance Corporation or other similar governmental entity. In such cases, the employee's financial interest may not be the amount of the account itself, but the amount of interest paid on the account, or the amount above the level covered by the insurance. Where the matters in which the employee would act would have a direct and predictable effect on the bank's ability to maintain and pay interest on an account or to preserve the amount in the account above the insurance limit, the employee's participation in these matters should be examined by the appointing official on an individual basis.

In summary, because the meaning of the term ''financial interest'' under section 208 is not identical to its commonplace or conventional meaning, this proposed regulation does not contain exemptions for certain interests that may be commonly thought of as ''financial interests,'' but that are not affected by most Government matters so as to require disqualification under section 208. This would include, for example, deposits in bank accounts and interests arising from most insurance policies.

There may be situations in which there is some potential for an employee's financial holding to be affected by the outcome of a matter, but the employee would not have a disqualifying interest under section 208(a). For example, if an employee is a contingent beneficiary in a will executed by a still living relative, the employee's interest in the assets to be distributed under the will is merely speculative since he may never inherit them. For purposes of section 208(a), the employee would not be disqualified from participating in matters affecting those assets.

Another limitation on the scope of section 208(a) concerns the range of interests it covers. To be within the scope of the statute, the affected interest must be that of the employee, his spouse, his minor children, a general partner of the employee, an organization in which the employee serves as officer, director, trustee, general partner or employee, or an organization with which the employee is negotiating or has any arrangement concerning

prospective employment. Thus, section 208(a) prohibits an employee from acting in a particular matter that will have a direct and predictable effect on the financial interests of a company by which he is employed in his off-duty hours. On the other hand, section 208(a) does not necessarily bar an employee from acting in a matter affecting his *spouse's* employer. Because the financial interests of a spouse's employer are not specified as disqualifying financial interests under the statute, an employee is not disqualified from acting in matters affecting a spouse's employer unless the matter would have a direct and predictable effect on the *spouse's* financial interest. For example, where the spouse is a salaried employee, does not have an ownership interest in the employer, and the matter will not affect her continued employment or her benefits, the agency matter ordinarily would not have a direct and predictable effect on her financial interest. *See, e.g.*, OGE Informal Advisory Letter 84x6 (May 1, 1984), OGE Advisory Publication, p. 465. Under such circumstances, the employee would not be disqualified under section 208(a) from participating in the particular matter.

This does not mean, however, that an employee who concludes that a matter will significantly affect the financial interest of a person or entity with whom he has a close business or personal relationship should act on the matter because the financial interest is not within the scope of section 208(a). Even though section 208(a) is not applicable by its terms to a specific situation, administrative regulations might prohibit participation in particular circumstances. The Standards of Ethical Conduct for Employees of the Executive Branch contain procedures an employee should follow in cases where his impartiality might be questioned if he were to participate in a Government matter affecting financial interests that do not fall within the scope of section 208(a). *See* 5 CFR 2635.501 *et seq.* For example, under § 2635.502, an employee must consider whether his impartiality would be questioned if he were to participate in a particular matter involving specific parties in which his spouse's employer is a party, or represents a party.

It is important to note that section 208(a) applies only in cases where the employee knows that he, or any other person or entity specified in section 208, has a financial interest that will be affected. For example, an employee who is a general partner in a partnership is prohibited from acting in an official capacity in matters that would affect the financial interests of his general partners. If one of his general partners owns stock in a corporation that would be affected by an agency matter in which the employee would participate, the employee would be barred from participating only if he knows that his general partner owns stock in the corporation. Employees who are general partners should be alert to the fact that they will have actual knowledge of their partners' assets if they have reviewed copies of partners' financial statements or similar documents.

Section 208 prohibits employees from participating in a ''judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,'' or certain other ''particular matters.'' The term ''particular matter'' is discussed in the regulation at proposed § 2640.103(a)(1). In general, a particular matter is one that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. It may include rulemaking, legislation, or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not extend to broad policy options or considerations directed toward the interests of a large and diverse group of persons. Because the meaning of the term ''particular matter'' is often difficult to apply in specific situations, the proposed regulation contains a number of examples based on the opinions of the Office of Legal Counsel at the Department of Justice. In general, these opinions indicate that certain governmental matters having broad application to a large number of persons are not sufficiently focused on the interests of identifiable persons or classes of persons to be considered ''particular matters.'' However, such broad policy matters may later become particular matters when they are implemented in a way that the interests of specific persons or groups of persons are distinctly affected.

Some of the exemption provisions in this proposed regulation would apply to so-called ''particular matters involving specific parties''; others would apply to ''particular matters of general applicability not involving specific parties.'' The distinction between these two categories of ''particular matters'' is derived from concepts used in other criminal conflict of interest statutes, such as 18 U.S.C. 207. However, to avoid any misunderstanding about the meaning of the terms, the proposed regulation defines ''particular matter involving specific parties'' by restating a portion of the definition of that term as it is used in 5 CFR 2637.201(c)(1) for purposes of 18 U.S.C. 207.[1] A ''particular matter involving specific parties'' is one that typically involves a specific transaction affecting the legal rights of parties such as a contract, grant, or case in litigation. For purposes of this regulation, ''particular matters of general applicability not involving specific parties'' are those types of particular matters not encompassed by the description at 5 CFR 2637.201(c)(1). Examples of such matters are rulemaking and the formulation of policy directed to the interests of a discrete and identifiable class of persons. The regulation generally contains more expansive exemptions for participation in ''matters of general applicability not involving specific parties'' because it is less likely that an employee's integrity would be compromised by concern for his own financial interests when participating in these broader matters.

Before an employee decides that section 208 might prevent him from participating in a certain governmental matter, he should determine whether the matter is a ''particular matter'' or a ''particular matter involving specific parties.'' Once he decides that the matter is a ''particular matter'' or a ''particular matter involving specific parties,'' he should then decide whether the matter will have a direct and predictable effect on his financial interest.

Finally, it is important to note that the requirements of section 208, as well as the exemptions in this proposed regulation, apply not only to regular Government employees, but also to special Government employees as defined in 18 U.S.C. 202(a). The proposed regulation also contains an exemption at § 2640.203(g) applicable solely to special Government employees serving on advisory committees. In addition, waivers issued pursuant to 18 U.S.C. 208(b)(3) for members of Federal advisory committees specifically impact special Government employees, many of whom serve on Federal advisory committees. And, of course, the waiver authority of section 208(b)(1) may be used in individual cases where there is a conflict between the financial interests of a special Government employee and his official responsibilities.

[1] Section 207 was amended in part by the Ethics Reform Act of 1989, Pub. L. 101–194, and Pub. L. 101–280. The Office of Government Ethics expects to publish regulations interpreting section 207, as amended. The new regulations are expected to contain a similar definition of the term ''particular matter involving specific parties.''

## II. Exemptions from the Prohibition of Section 208(a)

This proposed regulation contains three categories of exemptions from the prohibitions of 18 U.S.C. 208(a). First, the regulation contains proposed exemptions relating to interests arising out of the ownership of mutual funds, common trust funds, unit investment trusts, and employee benefit plans. Second, the regulation contains proposed exemptions arising out of the ownership of interests in securities. Finally, it contains several miscellaneous provisions which would establish exemptions that would apply only in specific situations or only to employees of certain agencies. It is expected that agencies may ask for additional exemptions applicable only to employees or groups of employees at those agencies, as they become aware of the need for them.

For the most part, the exemptions proposed in this regulation would apply to interests that are common to a large number of employees and that are relatively simple to identify, such as those arising from the ownership of mutual funds and securities. In general, the regulation as proposed does not contain exemptions for other potentially disqualifying financial interests which are not normally disqualifying for most employees, such as the interest of a policyholder of a life insurance policy. In most cases, it is unlikely that the typical Federal employee would be required to act in a matter which would affect an insurance company's ability to fulfill its obligation to pay a benefit upon the death of the insured or which would affect the cash value of the policy. Except in the case of interests arising from the purchase of insurance from a mutual insurance company where employees have more a direct interest in the operations of the company itself, interests such as this are not usually disqualifying financial interests under section 208. Those unusual cases where section 208 would bar an employee from acting in a particular matter are best handled on a case-by-case basis in accordance with the procedures for granting an individual waiver under section 208(b)(1) or (b)(3).

Additionally, there may be certain financial interests that create a problem under section 208 only for employees of a particular agency because of that agency's mission, but that are remote or inconsequential enough that an exemption under section 208(b)(2) would be appropriate. For example, the regulation at proposed § 2640.203(h) has an exemption that applies solely to the Directors of Federal Reserve banks. Although this regulation is an executive branchwide rule, OGE will consider including other exemptions which may have applicability only to employees of a particular agency if an exemption would be significant for a large number of the agency's employees and agency resources that would be utilized in issuing individual waivers under section 208(b)(1) would be better used elsewhere in implementing the agency's ethics program. For example, the proposed exemptions for short-term Government securities at § 2640.202(d) and commercial discount and incentive programs at § 2640.203(e) primarily benefit employees at a limited number of agencies. However, these agencies have a sufficient number of employees that can take advantage of the exemptions that it would be appropriate to include specific exemptions here. The Office of Government Ethics specifically requests suggestions for any such exemptions that should be established and asks that agencies making such suggestions provide proposed ''exemption'' language to facilitate consideration of the recommendations.

The definitions of some of the terms used in the exemptions proposed in this regulation may appear to be inconsistent with similar or related terms used in other regulations issued by OGE. In particular, the definitions of diversified mutual fund, common trust fund, unit investment trust, and employee benefit plan are not parallel to the definition of an excepted investment fund (EIF) as that term is used in connection with reporting assets on a financial disclosure form and which is defined in 5 CFR 2634.310(c)(2). For the reasons described in section A below, OGE has determined that it is impractical to adopt the definition of ''excepted investment fund'' for use in defining similar terms in this regulation.

Finally, the Office of Government Ethics has attempted to devise exemptions that can be understood and easily applied by the individual Government employees who have conflicting financial interests. The Office of Government Ethics believes that, to the extent possible consistent with the requirements of section 208, the exemptions in this proposed regulation should not be so complex and technical that a typical Government employee would need the advice and assistance of an agency ethics official to determine how to apply the regulation in his particular case. Because one of the purposes of these regulatory exemptions is to lessen the burden on agency ethics officials who may be issuing numerous individual waivers under section 208(b)(1) or (b)(3), OGE has tried to simplify the language of each proposed exemption. However, because section 208 is a criminal statute with significant penalties, the language of each exemption also must carefully delineate the scope of the exemption.

### *A. Exemptions for Mutual Funds, Common Trust Funds, Unit Investment Trusts, and Employee Benefit Plans*

#### 1. Diversified Mutual Funds, Common Trust Funds, and Unit Investment Trusts

For purposes of section 208, an employee who has an interest in a pooled fund such as a mutual fund, a common trust fund, or unit investment trust is deemed to have a financial interest in a matter that would affect the assets held by the fund or trust. In most cases, the holdings of such funds are diversified, with only a limited portion of the fund's assets placed in the securities of any single issuer. Moreover, a fund typically holds securities of issuers who are engaged in a variety of businesses or industries. Usually an employee's interest in any one fund is only a small portion of the fund's total assets. For these reasons, it is generally unlikely that an employee's official actions with regard to any one of the holdings of the fund in which he holds shares will have any consequential effect on the employee's financial interest. Accordingly, proposed § 2640.201(a) would permit an employee to participate in any particular matter affecting the holdings of a diversified mutual fund, diversified common trust fund, or diversified unit investment trust in which the employee, or any other person specified in section 208, has a direct or beneficial ownership interest. The term ''direct or beneficial ownership'' means that the employee's interest can arise either through his direct ownership of a share in the fund or trust, or as the beneficiary of a trust or an estate that holds such shares.

To ensure that the foregoing assumptions are satisfied, however, the proposed exemption described in § 2640.201(a) would apply only to the holdings of trusts or funds which meet the following criteria. First, if the fund is a mutual fund, it must be a diversified mutual fund that meets the requirements of section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), for a ''diversified company.'' Section 80a–5 specifies that, for at least 75% of its assets, a diversified company may not invest more than 5% of its assets in any one issuer nor hold more than 10% of the

outstanding voting securities of any issuer. Additionally, the proposed rule's definition of the term ''diversified'' at § 2640.102(b) requires that the fund not have a stated policy of concentrating its investments in any industry, business, single country (other than the United States), or bonds of a single State. This would ensure, for example, that an employee of the Food and Drug Administration (FDA) would not be given an automatic waiver for investments in a mutual fund which limits its holdings to drug company stocks. Of course, an appropriate FDA official could grant an individual waiver under 18 U.S.C. 208(b)(1) or (b)(3) to an employee in a particular case if the agency determined that the employee's interest in a mutual fund specializing in the pharmaceutical industry was not so substantial that it would affect the integrity of his services.

The Office of Government Ethics decided to define ''diversified mutual fund'' by reference to the definition of ''diversified company'' contained in 15 U.S.C. 80a–5 to provide employees a simple way of determining whether the mutual funds they own are, in fact, ''diversified.'' Regulations issued by the Securities and Exchange Commission (SEC) governing the administration of mutual funds specifically require that each mutual fund prospectus contain a statement concerning the fund's investment objectives, including whether the fund is deemed to be diversified for purposes of securities law. In most cases, this requirement will be met by a statement that the fund or the company is a diversified management investment company. By locating this statement in the fund's prospectus, an employee can easily determine whether the fund is considered ''diversified'' under this section 208 regulation. Alternatively, if the employee cannot find the relevant statement or the prospectus is unavailable, the employee can simply call the fund's manager or the broker through whom he purchased the fund and ask if the fund is a diversified company.

The Office of Government Ethics considered using other standards to define the term ''diversified'', such as adopting the standard for ''excepted investment funds'' as that term is used in 5 CFR 2634.310(c) for purposes of financial disclosure. ''Excepted investment funds'' cannot have more than 5% of the value of the fund's portfolio invested in any one issuer and more than 20% in any particular economic or geographic sector. However, use of standards such as this would require employees to examine the fund's assets and perform lengthy mathematical calculations to determine whether the particular fund was diversified. Moreover, because mutual fund assets continuously change, it would be burdensome to determine whether the fund was diversified at all times after the initial calculations were made. Using a numerical standard such as the 5%/20% formula described above arguably would require an employee to recalculate the ratio of assets in the fund's portfolio prior to participating in particular matters that occur on a continuing basis.

In informal discussions concerning the draft regulation, some agency ethics officials recommended that OGE define the term ''diversified'' only in relation to whether investments are concentrated in a particular sector, and not whether the fund's assets are invested in any particular number of issuers. Another ethics official suggested that the term ''mutual fund'' should not be defined by referencing regulations issued by the Securities and Exchange Commission because the regulations are extremely technical and most employees could not really be sure whether their investment is a ''mutual fund'' or a ''diversified company'' as defined by the SEC. The thrust of these recommendations was that an employee who failed to determine whether his investment met the statutory definitions would be misled into violating section 208 by acting in matters affecting interests in an investment that appeared to be a mutual fund, but was in fact some other type of pooled investment vehicle that was not technically a ''mutual fund'' as defined in SEC regulations. Leaving the relevant terms undefined presumably would absolve employees of the responsibility of determining whether their investments were actually diversified mutual funds and would thus avoid inadvertent violations.

The Office of Government Ethics shares these concerns, but does not agree that employees would be better served by dropping the requirement for ''diversification'' or by leaving the terms ''diversified'' and ''mutual fund'' undefined. First, OGE believes it is essential that the exemption proposed for mutual funds apply to funds that are diversified as to the *number of holdings* in the fund, as well as the sectors in which the holdings are invested. Because OGE has the authority to promulgate exemptions only for financial interests that are too ''remote or inconsequential'' to affect an employee's services to the Government, it would be difficult to conclude that interests arising from a fund containing only a few holdings would be remote or inconsequential enough to warrant a total exemption under section 208(b)(2).

Moreover, employees would also be at risk of violating section 208 if the terms ''mutual fund'' and ''diversified'' were not defined in the regulation. With the increasing variety of complex financial instruments that are available to investors, employees certainly could become confused about whether their particular pooled investments are diversified mutual funds. The experience of OGE in reviewing public financial disclosure forms indicates that private limited partnerships invested in securities are sometimes mistaken for mutual funds even though the partnership has a limited number of investors and holdings, and even though the holdings may not be diversified as to either numbers or sector. It would be unfair to employees not to clarify that interests such as these private partnerships would not be considered mutual funds for purposes of the exemption as proposed.

On balance, OGE decided that proposing to define the term ''diversified mutual fund'' by reference to 15 U.S.C. 80a–5 would be the most convenient method for determining whether the investment vehicle is a fund and is diversified, since a quick perusal of the fund's prospectus, or a call to the fund's manager, will indicate whether the fund is a diversified management investment company. Employees must be expected to have some responsibility for determining whether their investments meet the criteria for application of the exemption provisions. Employees also deserve to receive guidance that is reasonably specific enough to give them adequate notice of what investments meet the criteria for an exemption.

Similarly, by examining the prospectus or calling the fund's manager, an employee can determine whether the fund has a stated policy of concentrating its investments in any industry, business, or country, or to bonds issued by a single State. For example, some funds clearly limit their investments to biotechnology stocks, energy stocks, precious metals and minerals, agricultural products, telecommunications stocks, or municipal bonds issued by a single State. Securities and Exchange Commission regulations require mutual fund sponsors to describe limitations of this type in the fund's prospectus. Additionally, limitations on the type of assets held by a mutual fund are often reflected in the name of the fund itself, e.g. Vanguard Specialized Portfolios: Health Care or Fidelity Spartan New York High Yield. These types of funds

are commonly referred to as ''sector'' funds.[2]

The Office of Government Ethics decided not to consider funds invested in broad geographical regions as ''sector'' funds. While funds limited to a single State or a single country (other than the United States) would be excluded from the definition of ''diversified'' under this proposed rule, OGE concluded that it is unnecessary to also exclude, for example, funds limited to investments in Europe or the Pacific region. The Office of Government Ethics specifically requests comments on whether such funds should be considered ''diversified.''

Because the term ''mutual fund'' at proposed § 2640.102(l) includes ''registered money market funds,'' money market mutual funds would also have to be diversified in accordance with the standards described at § 2640.102(b)(1) for the exemption proposed at § 2640.201(a) to be applicable. Registered money market funds may be offered by a mutual fund company or may be marketed through a bank. In either case, however, as with other mutual funds, the prospectus describing the fund will contain the information an employee needs to determine whether the fund is diversified. For purposes of this regulation, money market instruments are not considered a single industry or business, and therefore, money market mutual funds are not considered investments concentrating in a single business or industry. By contrast, however, funds which have a policy of investing only in bank stock, or in savings and loan institutions, or in financial services are clearly limited to a single business or industry and are not considered ''diversified'' for purposes of this proposed regulation.

Money market deposit accounts (as opposed to money market mutual funds) offered by banks are not included in the proposed definition of the term ''mutual fund'' as it is used in this regulation. Accordingly, the exemption for diversified mutual funds at § 2640.201(a) as proposed would not be applicable to bank money market deposit accounts. The inapplicability of the proposed exemption to money market deposit accounts is not a problem, however, because in most cases, an interest in such an account is not a disqualifying financial interest under section 208. Unlike a money market mutual fund, a bank money market account is a type of individual deposit account funded by the bank's investments. Just as in the case of a regular bank savings account, it is unlikely that an employee would have a disqualifying financial interest because of his account. First, an employee would rarely have knowledge of the bank's underlying investments. However, even in those unusual cases where the employee did have knowledge of those investments, it would be unlikely that a Government matter involving one of the investments would have a direct and predictable effect on the employee's ''financial interest'' in his deposit account.

On the other hand, employees whose official responsibilities require them to participate in matters affecting banks where they have money market or other deposit accounts may have to consider whether the Government matters in which they might participate would have a direct and predictable effect on the bank's ability to maintain, and pay the appropriate interest on, the accounts. In such cases, of course, the employee may have a disqualifying financial interest in whether the bank can continue to pay interest on his deposit account, rather than a disqualifying financial interest in the bank's investments.

In summary, to make a definitive determination whether a particular mutual fund is ''diversified'' for purposes of this proposed regulation, an employee simply has to find whether the prospectus states that the fund is a diversified management company, and whether it has a policy of concentrating its investments in a particular industry, business, single country (other than the United States) or in bonds issued by a single State. Because the SEC requires that this information be contained in the prospectus, employees may properly rely on the accuracy of the information. If the prospectus has the specified information, an employee is not required to make any independent determination concerning the fund's diversification. If the employee cannot find the relevant statement in his prospectus or does not have a prospectus, he may call the fund's manager or the broker who sells the fund and ask whether the fund is a ''diversified company.''[3]

The regulation, at § 2640.201(a), also contains a proposed exemption for participating in matters affecting the underlying assets of a diversified unit investment trust. A unit investment trust is ''diversified'' if it meets the definition of a ''regulated investment company'' at 26 U.S.C. 851(a)(1)(A). The standard set forth in section 851 requires that, for 50% of its assets, no more than 5% of the trust's assets may be invested in any one issuer and the trust may hold no more than 10% of any one issuer's outstanding voting securities. Additionally, no more than 25% of the trust's total assets may be invested in any one issuer, or in two or more issuers that the trust controls and which are engaged in the same or similar trades or businesses. An employee need not make an independent determination whether the unit investment trust in which he has invested meets these criteria. Instead, the employee should consult the prospectus describing the trust or the trust's sponsor to determine whether the trust is a ''regulated investment company.'' If it is so described, it satisfies this regulation's diversification requirements, provided the trust does not have a stated policy of concentrating its investments in any industry, business, or single country (other than the United States), or to bonds issued by a single State.[4]

The assets of a common trust fund will be ''diversified'' for purposes of this proposed regulation if the common trust fund meets the rules for ''diversification'' established by the Office of the Comptroller of the Currency at 12 CFR 9.18. These rules provide that no more than 10% of a fund's assets may represent one investor's interest, and that no more than 10% of the fund's assets may be

[2] Although a sector fund is not considered a ''diversified mutual fund'' for purposes of the exemption described at § 2640.201(a), a mutual fund (including a nondiversified mutual fund) is a ''publicly traded security'' for purposes of the de minimis exemptions described in § 2640.202. Accordingly, the proposed regulation would permit an employee to participate in certain matters affecting financial interests arising from the ownership of a de minims amount of nondiversified mutual funds. Also, proposed § 2640.201(b) would exempt interests arising from assets in a sector mutual fund which are not invested in the sector in which the fund concentrates.

[3] Although this proposed regulation would reference several definitions contained in statutes and regulations within the purview of the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Internal Revenue Service, and the Department of Labor, those agencies do not have any role in interpreting the provisions of this regulation. Inquiries concerning the meaning of terms used in those statutes and regulations, and the way those terms are used in this regulation, should be directed to OGE.

[4] A unit investment trust (or a mutual fund) comprised of bonds issued by a single State would not meet the diversification requirements of this regulation. However, the lack of an exemption would not be a problem for most Federal employees since they typically would not have a disqualifying financial interest arising from ownership of State bonds. Except in unusual cases, the official matters in which an employee would participate would not affect the bond's rating or the State's ability or willingness to honor its obligation to pay interest on the bond.

invested in any one issuer. This diversification standard applies explicitly to common trust funds maintained by national banks. It also applies to funds maintained under State law by State banks which are required by 26 U.S.C. 584(a) to adhere to rules established by the Office of the Comptroller of the Currency, including the rules for diversification of common trust funds. An employee may presume that any State bank maintaining a common trust fund adheres to these requirements. Of course, as with mutual funds and unit investment trusts, the bank maintaining the fund cannot have a policy of concentrating its investments in an industry, business, or country, or in bonds issued by a single State.

2. Sector Mutual Funds

Section 2640.201(b) would contain a provision permitting an employee to participate in any particular matter affecting the holdings of a sector mutual fund, provided the affected holding is not invested in the sector in which the fund concentrates. This provision would address the problem that might be encountered, for example, by an employee of the Federal Reserve who owns shares in a sector mutual fund that concentrates in biotechnology stocks, but which also has bank stocks in its portfolio. The proposed exemption would permit the Federal Reserve employee to participate in matters affecting banks whose stock is in the fund's portfolio without obtaining an individual waiver under section 208(b)(1).

The proposed regulation does not contain an exemption for holdings in a geographic sector mutual fund where an individual holding creates a section 208 conflict for an employee, but the sector as a whole does not create a conflict. This might occur, for example, when a Food and Drug Administration employee purchases a mutual fund which concentrates its investments in German businesses and the employee is involved in reviewing an application for a drug approval submitted by a German pharmaceutical company whose stock is a holding of the mutual fund. The Office of Government Ethics requests specific suggestions for language for an exemption that would be applicable in this situation.

3. Employee Benefit Plans

Proposed 5 CFR 2640.201(c)(1) (i), (ii) and (iii) would permit an employee to act in any particular matter affecting the *holdings* of the Federal Government's Thrift Savings Plan, a pension plan established or maintained by a State or local government, or other diversified employee benefit plan in which the employee participates. By participating in the plan, the employee has a financial interest in a matter that affects one or more assets held by the plan. The exemption would also apply in situations where any other person specified in section 208 participates in the plan.

In the case of State or local government pension plans, OGE's experience has been that the plans typically are comprised of a large number of varied assets managed by an independent agency or board. Therefore, the proposed exemption at § 2640.201(c)(1) would apply to an employee's disqualifying interest in the holdings of any State or local government pension.

For all other types of employee benefit plans, the exemption would apply only if the plan is (i) diversified; (ii) the plan's investments are administered by an independent trustee; (iii) the employee (or other person specified in section 208) does not participate in the selection of the investments except to direct that contributions be divided among several different types of investments (such as stocks, bonds or mutual funds) available to plan participants; and (iv) the plan is not a profit-sharing or stock bonus plan. Although this proposed provision would apply to all types of employee benefit plans as described in § 2640.102(d), for all practical purposes most of the plans covered by the provision are some form of employee savings or retirement plan that provides deferred income, typically after the employee has retired. Most often employees view these plans as pensions.

Most pensions (and similar employee benefit plans covered by this rule) are one of two types: A defined benefit plan or a defined contribution plan. A defined benefit plan is one that is designed to provide participants with a defined or specified benefit upon retirement, such as an annual income that is a specific percentage of the compensation received by the participant during a certain period of his employment. By contrast, a defined contribution plan is one that establishes an individual account for each participant. In the case of a defined contribution plan, the retirement benefit received by the employee is based upon the contributions to and any income generated by the account, and can vary depending upon the gains, losses, and expenses that are attributable to the account. Benefits to which a participant is entitled under a defined benefit plan may be insured by the Pension Benefit Guaranty Corporation (PBGC) or by private insurance contracts or annuities.

In most cases, an employee will not have a section 208 interest in the *holdings* of a defined benefit plan because payment of the specified benefit is ensured whether or not the plan holdings generate income sufficient to fund the benefit. Therefore, under most circumstances an employee would not need a waiver under section 208 (b)(1) or (b)(3) or an exemption under section 208(b)(2) to act in matters affecting the *underlying assets* of a defined benefit plan. In some cases, the employee may have a financial interest in the sponsor of the plan who has promised to pay the benefit upon retirement. Except as provided in § 2640.201(c)(2) as proposed, authority to act in matters affecting the sponsor of such a plan must be handled on an individual basis in accordance with the provisions of 18 U.S.C. 208(b)(1). As a practical matter, however, most governmental matters in which an employee would participate are unlikely to have a direct and predictable effect on the plan sponsor's ability or willingness to pay an employee's pension benefits. Accordingly, most employees will not have a disqualifying financial interest in either the holdings or the sponsor of a defined benefit plan.

On the other hand, employees would ordinarily have a financial interest in the holdings of a defined contribution plan since those holdings are the assets which will generate the employee's retirement or other income. Therefore, in the absence of an exemption or waiver, an employee cannot act in particular matters that would have a direct and predictable effect on those holdings. The proposed exemption at § 2640.201(c)(1) would permit an employee to act in particular matters affecting the holdings of an employee benefit plan only if the plan meets the criteria described below.

First, the plan must be administered by an independent trustee which is defined in § 2640.102(g) as either a trustee independent of the plan's sponsor and participants, or a registered investment adviser. Second, the proposed rule would not permit the employee to select his own investments. However, the prohibition on participation in selecting plan investments would not bar an employee from directing the division of employer or employee contributions among a variety of types of investments or among a group of specific investment vehicles chosen by the plan trustee or manager. For example, a pension plan may offer participants the opportunity to choose between a bond fund, a common stock

fund, or a government securities fund. Participants may choose to divide their investments among the various funds.

Additionally, as with mutual funds, common trust funds, and unit investment trusts, this regulation as proposed would require that the assets of the plan must be diversified. Unlike mutual funds, common trust funds, and unit investment trusts, however, there is no independent statutory or regulatory diversification requirement for employee benefit plans except that plan sponsors and managers have a fiduciary responsibility to diversify plan assets to reduce risk to the investors. *See* 29 U.S.C. 1104(a)(1)(C). Because there is no specific numerical standard for diversification that this proposed regulation could easily reference to assist employees in determining whether an individual plan is diversified, OGE had to consider whether it wanted to create a diversification standard similar to others referenced in the regulation. Alternatively, OGE considered whether to adopt the same diversification standard used by employees to determine whether they must report the underlying assets of certain funds or trusts on the public financial disclosure statement (SF 278), i.e. no more than 5% of a plan's assets can be invested in any one issuer and no more than 20% of the plan's assets can be invested in any one business, industry, or economic or geographic sector.

The problem with adopting any one of these diversification standards is that before an employee could decide whether the exemption would be applicable, he would be required to obtain a copy of the plan's portfolio and scrutinize it to determine how the plan's assets are invested, including what proportion of assets are invested in particular issuers and particular industries or sectors. The Office of Government Ethics believes that in many cases it is unrealistic to assume that employees can easily obtain an inventory of pension holdings and make accurate calculations about the percentage of holdings in various issuers and industries. The problem is especially exacerbated by the fact that the assets of many employee benefit plan portfolios are continually changing and it would be difficult to establish with any certainty the relative proportion of the plan's assets from day to day. This problem is not so significant for purposes of determining whether an employee benefit plan is an excepted investment fund (EIF) for purposes of financial disclosure because financial disclosure rules only require employees to determine whether the plan is diversified on the day the report is filed. Where section 208 is implicated, however, employees may be participating over a period of time in Government matters and presumably the plan would have to be diversified at all times when the employee would participate in the matter affecting the plan's assets. If OGE created a numerical diversification standard for employee benefit plans in this regulation, it would be nearly impossible for employees to know from day to day whether the plan continued to be ''diversified,'' and OGE's goal of issuing clear and easy-to-use exemptions would be severely undermined.

On the other hand, OGE is unwilling to permit an automatic exemption to apply to any employee benefit plan, whether or not it is diversified. Without a requirement for some type of diversification, employees would be free to act in matters affecting the holdings of a plan which could contain any amount of a single asset, thus increasing the possibility that the employee might significantly gain or lose as a result of the Government matter in which he would participate. This outcome would subvert the statute's clear intent to exempt only interests that are remote or inconsequential.

Because the majority of employee benefit plans are widely diversified in any case, OGE's concern may be somewhat theoretical. Nevertheless, OGE has decided to propose a requirement that, for the exemption to apply, employee benefit plans must be diversified, i.e. the plan trustee or manager must have a written policy of varying plan investments.

This diversification standard would simply require an employee to determine whether the plan trustee or manager has articulated a policy of diversifying plan assets. The diversification policy might ordinarily be stated in materials describing the benefit plan. For example, brochures describing the TIAA-CREF retirement plan for employees of educational and research institutions specifically state that the CREF Stock Account is a ''broadly diversified portfolio of U.S. stocks,'' and that the CREF Social Choice Account is ''diversified among stocks, bonds * * *.'' In the absence of such a statement, the employee could obtain a written statement from the plan manager or trustee indicating that he has a policy of diversification. In most cases, the manager or trustee will attempt to diversify plan investments in accordance with his or her fiduciary responsibilities under 29 U.S.C. 1104(a)(1)(C).

In addition, the proposed regulation would require that the plan not have a stated policy of concentrating its holdings in any business, industry, single country other than the United States, or bonds of a State within the United States. The provision does not require an employee to perform any mathematical calculation to determine whether a particular percentage of the plan's assets are invested in any industry or sector, but simply to ascertain whether the plan has a policy of making such investments.

Finally, the regulation at proposed § 2640.201(c)(1)(iii)(B) states that the plan may not be a profit-sharing or stock bonus plan. This limitation would ensure that the exemption would not allow an employee to participate in matters affecting the corporate sponsor of a plan. However, because profit-sharing plans which are tax-deferred under 26 U.S.C. 401(k) have become a common form of employee benefit, 401(k) plans would be excluded from the term ''profit-sharing plan'' for purposes of this regulation.

Section 2640.201(c)(2) as proposed contains a provision which would permit an employee to act in particular matters of general applicability affecting the *sponsor* of a State or municipal pension plan in which the employee, his spouse or minor child, or general partner, participates. As used in this regulation, the term ''pension'' means a plan, fund or program established or maintained by a State or municipality to provide retirement income for its employees or which results in a deferral of income by employees for periods extending to termination of covered employment or beyond.

As used in the regulation, the term ''sponsor'' means the State or municipality that established or maintains the plan, not any individual State or municipal agency, board, or panel that may administer the plan on behalf of the State or municipality. Of course, the restrictions of section 208 apply only when the particular matter in which the employee would act has a direct and predictable effect on his financial interest. In the vast majority of cases involving defined benefit plans, it would be unlikely that any particular matter would affect a government's ability or willingness to pay the employee's pension. However, in the event that the employee would be required to act in such a matter, this provision would allow an employee to act only in a particular matter not involving specific parties, such as a rulemaking.

If the matter in which the employee would participate affects the State or

municipal agency, board or panel which administers the plan on the State or local government's behalf, the employee would not be able to participate in the matter without first receiving an individual waiver in accordance with the terms of 18 U.S.C. 208(b)(1).

*B. Exemptions for Interests in Securities*

Because many Federal employees own shares of stock and other types of securities, the proposed regulation contains a number of provisions that describe exemptions for matters affecting financial interests arising out of ownership of securities. Some of the exemptions would apply when the employee owns the security directly; others would apply only when the security is owned by other persons specified in section 208, such as an organization in which the employee serves as officer or director. In addition, some of the exemptions would apply to participation in all types of particular matters, including those involving specific parties. Other exemptions would apply only to participation in particular matters of general applicability. In general, the type and extent of exemption depends on the type of matter involved, the amount of the employee's financial interest, and the likelihood that the employee's action will affect the entity issuing the securities.

As defined in the proposed regulation at § 2640.102(r), the term ''security'' has a somewhat expansive meaning including stock, bonds, mutual funds, long-term Federal Government securities, limited partnership interests, and municipal securities. However, for many of the exemptions to be applicable, the securities must be ''publicly traded securities'' as defined in the regulation at proposed § 2640.102(p). This means that in addition to being the type of security described in § 2640.102(r), the securities would have to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 781) and listed on a national exchange or traded through NASDAQ, or be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–8), or be a corporate bond issued by an entity whose stock meets the definition of a ''publicly traded security.'' In general, this requirement ensures that the securities which are the subject of an exemption are widely disseminated. In the case of corporate bonds, the definition of ''publicly traded security'' will ensure that many bonds which are not traded on a national exchange (but are instead sold over-the-counter) will still be covered by the exemption.

Although most of the securities owned by employees clearly will be ''publicly traded'' within the meaning of the definition, there may be some cases where the employee is not absolutely certain whether a security is ''publicly traded'' within the meaning of this regulation. In such cases, employees should discuss the matter with a broker or simply call the issuer.

An interest in stock can create a section 208 disqualifying financial interest in a number of ways. First, ownership of shares of stock in an entity normally represents an ownership interest in the entity itself. Therefore, Government matters that affect the financial interest of the entity have a concomitant effect on the financial interest of the person who owns stock in the entity. For purposes of section 208, the effect of the matter on the entity need not be reflected in a change in the price of the entity's stock. Section 208 is implicated if the matter affects the entity's financial interest in any measurable way, such as when a contract for computer maintenance services is awarded to a large corporation that develops, manufactures and maintains computers. Even if the contract amount is not significant enough to result in an increase in the value of the company's stock, the mere award of the contract has affected the company's finances, and an employee who owns stock in the company has a disqualifying financial interest in the award of the contract to the company. Of course, in some cases a Government matter may be so significant that the price of the company's stock rises or falls to reflect the financial market's reaction to the matter. In such cases, an employee who owns stock in the company would even more clearly have a disqualifying financial interest in the matter.

Corporate bonds and certain municipal and Government bonds are included in the definition of ''security'' for purposes of the proposed regulation. Of course, a bond is also a form of debt owed by the entity issuing the bond. Ordinarily, ownership of a corporate or municipal bond does not create a disqualifying financial interest unless the Government matter in which the employee participates would have a direct and predictable effect on the market value of the bond or the entity's ability to repay the debt. The proposed rule contains exemptions that would apply in cases where the bond's value or the issuing entity's ability to pay would be affected.

The term ''municipal security'' is defined in the proposed regulation at § 2640.102(k) to include only the direct obligations of, or obligations guaranteed as to principal or interest by, a municipal entity. Thus, certain industrial development bonds which are issued under municipal aegis, but which actually represent the obligations of a private organization, would not be deemed municipal securities for purposes of this regulation. Since the corporations which issue industrial development bonds are varied, including both public and nonpublic companies, a blanket waiver to cover interests in securities offered by such organizations is inappropriate.

The term ''long-term Federal Government security'' is defined in the proposed regulation at § 2640.102(j) to mean bonds or notes with a maturity of one year or more issued by the United States Treasury pursuant to 31 U.S.C. chapter 31. Because the value of these long-term securities can fluctuate widely, OGE has determined that it would be appropriate to exempt financial interests arising from the ownership of these Government securities to the same extent that financial interests arising from other securities are exempted. On the other hand, the value of short-term Federal Government securities (with maturities of less than one year) cannot be substantially affected by the actions of employees who participate in matters involving those securities. Therefore, the regulation would contain a separate exemption at § 2640.202(d) for interests arising from the ownership of short-term Federal Government securities. Of course, as a practical matter only employees involved in setting and implementing monetary policy or other similar governmental matters are likely to be participating in matters affecting financial interests in Government securities in any event.

The term ''Federal Government security'' does not include a security issued by any Federal entity other than the U.S. Treasury pursuant to 31 U.S.C. chapter 31. Accordingly, interests arising from the ownership of securities issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), and other similar Government agencies and Government-sponsored entities are not automatically exempt from the requirements of section 208. Of course, in appropriate cases disqualifying financial interests arising from the ownership of Federal agency securities may be waived on an individual basis pursuant to 18 U.S.C. 208(b)(1).

Even though interests in diversified mutual funds, and certain interests in sector mutual funds would be totally exempted under § 2640.201 as proposed, the term ''mutual fund'' is included in the definition of ''security'' for the purpose of the de minimis exemptions. This means that nondiversified mutual funds would be exempt to the same extent, and under the same circumstances, that stocks, bonds and other ''securities'' are exempt. Thus, an interest in $5,000 worth of a biotechnology sector mutual fund would be exempt even though an employee would be participating in a particular matter involving a company whose stock was owned by the mutual fund. Similarly, proposed § 2640.202(c) would permit an employee to participate in a particular matter of general applicability even if he owned $25,000 worth of a sector mutual fund, one of whose holdings was a company affected by the matter in which the employee would participate. For purposes of the de minimis provisions, the value of an employee's interest in a mutual fund would be the value of his interest in the fund as a whole, not the pro rata value of any underlying holding of the fund.

1. De Minimis Exemptions

The first exemption pertaining to ownership of securities at § 2640.202(a) as proposed would permit an employee to participate in any particular matter involving specific parties where the employee's financial interest arises from the direct or beneficial ownership by the employee, his spouse or minor child of publicly traded securities, long-term Federal Government securities, or municipal securities valued at no more than $5,000 where the entity issuing the security is a party to the matter. The term ''direct or beneficial ownership'' means that the employee's interest can arise either through his direct ownership of the securities, or as the beneficiary of a trust or an estate. The value of securities owned by the employee, his spouse, and his minor children must be aggregated to determine whether the exemption applies.[5] Thus, for example, if an employee owns stock in each of several companies which are parties to the particular matter, the provision at proposed § 2640.202(a) would not exempt him from the prohibition of section 208 unless the aggregate value of the stock he owns in all parties is no more than $5,000.

The Office of Government Ethics considered proposing to set the de minimis standard at no more than $1,000 because that is the minimum value for assets that must be reported on an employee's public financial disclosure statement (SF 278). Setting the de minimis level at $1,000 would have permitted agency ethics officials who review financial disclosure reports to counsel employees that section 208(b)(2) exempts all interests in securities they own whose values fall below the threshold for reporting on the SF 278 statement. However, the actual financial interest one might have in a matter because of the ownership of stock worth no more than $1,000 would have been a significantly lower amount than OGE believes can be considered ''inconsequential'' within the meaning of section 208(b)(2) and would have clearly limited the exemption's usefulness. After final adoption of this rule (with any modifications), OGE will periodically review this and other specific dollar thresholds as well as other aspects of this regulation.

Where an employee has an interest in a security issued by an entity which is not a party to the particular matter involving specific parties, but which is nonetheless affected by the matter, the employee may act in the matter if the value of the security does not exceed $25,000. *See* proposed § 2640.202(b). This might occur, for example, when one automobile manufacturer sues the Government to enjoin enforcement of a new regulation that will require all manufacturers to incur additional production expenses. A Government attorney involved in the litigation who owns stock in another auto manufacturer not a party to the litigation may continue to act in the case pursuant to this exemption if the value of his stock does not exceed $25,000. Of course, this proposed exemption would be relevant only in cases where section 208 was applicable to the matter at issue, i.e. the matter would have a direct and predictable effect on the employee's financial interest arising from the security.

Proposed § 2640.202(b) would not permit an employee to act in a particular matter if the aggregate value of affected securities owned by the employee, his spouse and minor children exceeds $25,000. For purposes of determining whether the $25,000 limitation is met, the value of securities exempted under § 2640.202(a) would have to be included. For example, if an employee owns $5,000 of stock in an automobile manufacturer which is a party to a case in litigation in which the employee is involved, and he also owns $22,000 of stock in another automobile manufacturer affected by, but not a party to the litigation, he may not rely on the exemptions at §§ 2640.202(a) and (b), as proposed, to participate in the matter. Because the aggregate market value of his holdings in the securities of all affected entities exceeds $25,000, he would have to disqualify himself from the matter, or divest at least $2,000 worth of securities in affected party or non-party entities, or seek an individual waiver under section 208(b)(1) prior to participating in the matter. The purpose of the aggregation requirement is to ensure that the application of more than one exemption to a single matter does not violate the statutory criterion that exemptions be issued only for interests that have been determined to be remote or inconsequential.

The proposed regulation at § 2640.202(c) would permit an employee to participate in any particular matter of general applicability not involving specific parties, where the employee's disqualifying financial interest arises from the ownership of publicly traded, long-term Federal Government, or municipal securities issued by one or more entities, *if* the value of the employee's holdings (including the aggregate holdings of his spouse and minor children) in any one affected entity does not exceed $25,000, and his holdings in all affected entities does not exceed $50,000. This proposed exemption would not permit the employee to participate in particular matters having specific parties whether or not the issuer of the securities is a party. This exemption, as well as the exemption proposed at § 2640.202(b) for cases where the issuer of the security is not a party to the matter, would allow an employee to participate in matters where his financial interest was relatively insubstantial, and where it is not likely that the interest would be affected in a manner disproportionate to other affected entities.

Finally, it should be understood that the amounts set forth in the de minimis provisions in proposed § 2640.202 do *not* establish a threshold over which waivers may not be granted on an individual basis under section 208(b)(1). Therefore, an appointing official may decide in an individual case to grant a waiver to permit an employee to participate in particular matters involving parties in cases where an employee owns more than $5,000 worth of stock in an affected party. Similarly,

[5] Some of the exemptions in proposed § 2640.202 apply to the interests of the employee, the employee's spouse and minor children, and the employee's general partner. Others apply to interests arising from the holdings of a general partner, or someone whom the employee serves as officer, director, trustee or employee. Still others apply to the interests of any one listed in section 208.

an appointing official may grant waivers in cases where an employee would participate in matters of general applicability or in matters where he owns stock in affected entities which are not parties, even where the amount of the employee's holdings exceeds the amounts set forth in § 2640.202(b) and (c) as proposed. The criteria an agency should consider in granting such waivers are described in §§ 2640.301 and 2640.302 of this proposed regulation.

2. Short-term Federal Government Securities

Proposed § 2640.202(d) would permit an employee to act in any particular matter affecting a financial interest arising from the ownership of ''short-term Federal Government securities'' by the employee, or any other person specified in section 208. The term ''short-term Federal Government security'' is defined in proposed § 2640.102(t) to mean a bill issued by the United States Treasury pursuant to 31 U.S.C. chapter 31, with a maturity of less than one year. This provision, for example, would permit employees of the Federal Reserve to act in matters that would affect changes in the interest rates paid on Treasury bills. The Office of Government Ethics believes that the exemption for short-term Federal Government securities is warranted because changes in the interest rates paid on Treasury bills occur in relatively small increments, and do not significantly enhance the value of these bills because of their short maturities.

3. Interests of Tax-Exempt Organizations

Unless he is personally involved in an organization's investment decisions, an employee often would not have knowledge of the investment interests of organizations in which he is an officer, director, trustee, or employee. However, because section 208 bars him from acting in matters in which these organizations have a financial interest, section 208 will be implicated if an employee acts in a particular matter which he *knows* will affect the holdings of an organization he serves as officer, director, trustee, or employee.

The concern about a conflict of interest in such cases is diminished, however, if the organization is nonprofit and tax-exempt under section 501(c)(3) of the Internal Revenue Code, and the employee has no involvement in making investment decisions for the organization. Examples of such organizations include child or animal welfare organizations, community service groups, and health or medical research organizations. Section 2640.202(e) of this proposed regulation contains a provision that would permit an employee to participate in any type of particular matter affecting an entity which issues publicly traded, municipal, or long-term Federal Government securities in which a tax-exempt organization invests, if the employee serves the 501(c)(3) organization as an unpaid officer, director, or trustee, or as an employee. The exemption would apply only if the employee plays no role in making investment decisions for the organization other than participating in the decision to invest in several different categories of investments, the organization's holdings in the entity are limited, and the organization is not related to the entity except as an investor, or through a routine commercial transaction. This proposed exemption is limited in scope and only allows an employee to participate in a matter which affects the tax-exempt organization's investments. It would not permit the employee to participate in matters that directly affect the tax-exempt organization, or matters that would also affect the employee's own financial interests.

4. Interests of General Partners

Section 208(a) prohibits an employee from acting in any particular matter that would affect the financial interests of his general partner. Of course, in many cases, an employee will not have knowledge of his partner's financial interests, so that section 208 will not limit the employee's ability to act in Government matters in which his partner has an interest.

On the other hand, where the employee does have knowledge of his partner's interests, it might often be inappropriate for the employee to act in a matter which would affect those interests. However, where the general partner's interest is derived solely from the ownership of publicly traded, long-term Federal Government, or municipal securities, proposed § 2640.202(f)(1) would permit an employee to act in any particular matter affecting the issuer of the securities, if the value of the securities does not exceed $200,000 and ownership of the securities is not related to the partnership between the employee and his general partner.

Proposed § 2640.202(f)(2) contains a provision that would permit an employee to act in all matters where the disqualifying interest would arise from any interest of an employee's general partner, but only if the employee's relationship to his general partner is that of a limited partner in a large partnership, i.e. one with at least 100 limited partners. OGE believes that, in most such cases, an employee would not have enough of a personal relationship with his general partner that his judgment on official matters affecting his partner would be impaired, or would be perceived to be impaired, by the public. In cases where an employee is a limited partner in a partnership with fewer than 100 limited partners, he would have to receive an individual waiver under section 208(b)(1) before he could participate in particular matters in which he knows his general partner has a financial interest.

*C. Miscellaneous Exemptions*

1. Hiring Decisions

Employees throughout Government are expected to participate in routine personnel matters that involve current employees of an entity in which they may have a financial interest, but the Government personnel matters are unlikely to have any significant effect on their financial interests. In most such cases, it would be difficult to conclude that the employee has a disqualifying financial interest within the meaning of section 208 in the hiring of an employee. In certain exceptional cases, however, an employee's participation in a hiring decision might affect his financial interests. For example, an employee may be called upon to participate in a decision to hire a new employee currently working for a company in which he owns stock. In the case of some highly paid executives, the executive's departure may cause the company to incur gains or losses, thereby creating a disqualifying financial interest. An exemption under section 208(b)(2) would permit the employee to carry out his duties without raising any serious conflict of interest concerns.

Section 2640.203(a) as proposed would permit an employee who owns publicly traded securities issued by a corporation, or who has a vested interest in a pension plan sponsored by a corporation which issues publicly traded securities, to participate in Government hiring decisions involving an applicant currently employed by the corporation. This exemption would allow an employee to continue participation in routine hiring procedures even when the matter might nominally affect his interest in the corporation. The exemption would also apply in cases where any other person specified in section 208 owns publicly traded securities issued by the corporation or participates in a pension plan sponsored by the corporation.

2. Employees on Leave from Institutions of Higher Education

Proposed § 2640.203(b) would permit an employee who is on a leave of absence from an institution of higher education (defined as an educational institution described in 20 U.S.C. 1141(a)) to participate in matters of general applicability which would affect the financial interest of the institution. Because of the tenure system, an employee who comes from an academic setting to work in the Federal Government often takes a leave of absence from his academic position rather than terminate the position entirely. Under these circumstances, in cases where the employee's involvement in a Government matter would affect the educational institutional only as part of a larger class of similarly affected institutions, the likelihood of a conflict of interest is sufficiently remote that an exemption permitting the employee to act is warranted.

The proposed exemption would permit the employee to act only in matters affecting the institution from which he is on leave, not his own direct financial interests. For example, an employee could participate in developing a research plan that is expected to result in a grant announcement soliciting proposals from researchers to study a particular medical procedure even if he knows that the university from which he is on leave may submit a proposal. On the other hand, the employee could not participate under this exemption in a Government decision to increase the current funding levels of a certain type of research conducted by a group of colleges and universities, including the school from which he is on leave, if his university salary when he returns will be paid from an affected research grant.

3. Multi-campus Institutions of Higher Education

18 U.S.C. 208 prohibits an employee, including a special Government employee, from acting in a Government matter which would have a direct and predictable effect on the financial interest of his employer. In the case of some employees, particularly special Government employees, the non-Federal employer may be a multi-campus State institution of higher education. Even though the employee may be employed by only one campus of the institution, his employer is the entire institution and he is therefore barred from acting in official matters which affect any of the institution's campuses.

To lessen the hardship that would result from the application of section 208 in many cases involving multi-campus institutions of higher education and to alleviate the need for numerous individual waivers, the exemption at proposed § 2640.203(c) would permit an employee to act in matters affecting one campus of a state multi-campus institution of higher education if the employee is employed in a position with no multi-campus responsibilities at a different campus of the same institution. Where an employee is employed on one campus of an institution, he is not likely to be involved with matters occurring on other campuses, and therefore his interests in those matters are sufficiently remote that a blanket waiver would be appropriate. The exemption would allow an employee to participate in matters affecting other campuses of the institution only if his responsibilities are confined to the one campus where he is employed; a person whose responsibilities cross more than one campus would not be able to participate in any particular matter involving any campus of the institution without first receiving an individual waiver under 18 U.S.C. 208(b)(1).

4. Employees Whose Official Duties Affect the Financial Interests of Government Employees

Section 2640.203(d) as proposed would restate the exemptive provision contained in interim rule § 2640.101 of 5 CFR, which is being separately published in the **Federal Register** by OGE, that applies to interests that arise from employment in the executive branch of the Federal Government. With two exceptions, the provision exempts all disqualifying financial interests in Government salary and benefits, and in Social Security and veterans' benefits. The exemption does not permit an employee to make (1) determinations that individually or specially affect his own financial interest in Government salary and benefits, or (2) determinations, requests, or recommendations that individually or specially relate to, or affect the Government employment-related financial interests of any other person specified in section 208, such as the employee's spouse, minor child, or general partner. Furthermore, a note following the section explains that the exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement.

5. Participation in Discount and Incentive Programs

The proposed exemption at § 2640.203(e) concerns benefits earned in discount, incentive and other similar programs. These benefits might include, for example, frequent flier mileage, upgraded seating on airplanes, free tickets for additional airplane flights, and discounted rates for rental cars and hotel rooms. Typically these programs are established by commercial entities to generate loyalty to a particular company. Often participants in the programs earn benefits based on the amount of the company's services they utilize during a specified period. Employees may participate in such programs in a personal capacity, and usually participation would raise no concerns under section 208. However, in unusual cases, the benefits may create a financial interest of the employee in certain types of matters. Employees who act in Government matters which affect an entity's ability or inclination to honor its commitment to provide benefits may have a disqualifying financial interest in those matters. The exemption proposed at § 2640.203(e) would permit an employee who participates in such a significant way in matters affecting one of these entities to participate in these agency matters even if he, or any other person specified in section 208, participates in the benefit program. In the case of frequent flier programs, for example, this might include employees of the Federal Aviation Administration, or the Pension Benefit Guaranty Corporation, or the Antitrust Division of the Department of Justice.

6. Mutual Insurance Companies

An employee's interest as a policyholder of life, health, automobile, house and other types of insurance does not often create a section 208 disqualifying financial interest because there are not many Government matters in which an employee could participate that would affect an insurance company's ability or inclination to continue the benefits to which the employee is entitled under the policy. In the unusual case where an employee were assigned to participate in such a significant matter, the employee should first obtain an individual waiver under section 208(b)(1).

In the case of mutual insurance companies, however, employees may have interests in the company other than those involving the continuation of benefits. Mutual insurance company policyholders may have an interest in the overall financial health of the

mutual insurance company because the amount of the policyholders' premiums are based upon the profitability of the company. In such cases, the policyholder would have a disqualifying financial interest in any particular matter that would affect the company's profitability or general financial health. The proposed exemption at § 2640.203(f) would permit an employee to participate in any particular matter, including a matter involving parties, that would affect the financial interest of the employee, or any other individual specified in section 208, as a mutual insurance policyholder.

The exemption would not apply, however, if the matter would affect the company's ability to comply with its obligation to pay claims under the policy or to pay the employee the cash value of the policy. The exemption would, for example, allow an employee to participate in Government matters where his mutual insurance company insures a party to the matter as long as the matter was not so significant that it would impair the company's ability to satisfy its obligation to pay claims under the policy or to pay the employee the cash value of the policy. The exemption also would not apply when an entity specified in section 208 (e.g. a corporation that the employee serves as officer or director) rather than the employee himself or other individual specified in section 208 is a policyholder. OGE decided not to extend the exemption to this situation because of concern whether the financial interest of a corporation or other large entity as a policyholder might be considerably greater than one which could be considered ''inconsequential'' under the statute.

7. Special Government Employees Serving on Advisory Committees

Federal agencies often utilize the services of outside experts by forming advisory committees under the Federal Advisory Committee Act, 5 U.S.C. app. These committees are organized specifically to obtain the advice and recommendations of persons with expertise in a particular field. Therefore, many of the persons serving on an advisory committee will likely be employed or have some type of business relationship with private sector organizations that may be affected by the matter under review by the committee. Many advisory committee members are appointed as special Government employees and are therefore subject to the requirements of section 208.[6]

When 18 U.S.C. 208 was amended in 1989, a new waiver authority was added concerning the interests of persons serving on advisory committees. This new authority, at section 208(b)(3), permits an agency to waive, on an individual basis, any disqualifying financial interest of a special Government employee (SGE) serving on an advisory committee if the need for the employee's services outweighs the potential for a conflict of interest. Nevertheless, agencies which utilize the services of a large number of special Government employees on advisory committees still have to prepare innumerable waivers, largely on a routine basis, for the disqualifying interests of these employees. To eliminate the need for some of these individual waivers, the proposed regulation at § 2640.203(g) would exempt the employment interests of special Government employees serving on advisory committees, permitting them to participate in any particular matter of general applicability not involving specific parties. The provision would specifically permit a covered employee to act in a particular matter affecting a financial interest created because of his employment status. This would include, for example, the interests of an SGE's principal employer in a regulatory matter applicable to all similarly situated entities. The exemption would not apply, however, if the matter would have a special or distinct effect on the person other than as part of a class.

The Office of Government Ethics believes that this special exemption for members of advisory committees can be justified because the public's interest in the integrity of advisory committee proceedings is protected by the nature of the proceedings themselves. The Federal Advisory Committee Act requires that advisory committee meetings be open to the public, except in unusual circumstances. Moreover, the membership of advisory committees must be balanced so that a variety of viewpoints will be represented. Both of these requirements will ensure that the public is aware of a committee member's ties to persons who may be affected by the committee's deliberations. Finally, the findings of an advisory committee are not binding on an agency, but merely constitute recommendations that can be adopted or rejected by the agency.

Limitations on the use of the exemption would further ensure the integrity of the advisory committee process. First, the exemption would apply only to matters of general applicability which would not have a special and distinct effect on the affected person. Thus, the exemption would not permit a special Government employee to act in a matter in which the affected person was a party, or the competitor of a party. Second, the exemption would apply only to the financial interests which arise from the special Government employee's non-Federal employment, such as the employee's salary or the overall financial well-being of the entity or person who employs the special Government employee. It would not apply to the employee's stockholding interest in his employer, although such an interest could be exempt under § 2640.202(c) of this proposed regulation or under § 2640.201(c) if stock is part of an employee benefit plan as defined in the proposed exemption. Moreover, a disqualifying financial interest arising from the ownership of stock by the special Government employee could be waived on an individual basis under section 208(b)(1) or (b)(3).

8. Directors of Federal Reserve Banks

Although the other conflict of interest prohibitions in title 18 do not apply to the Directors of the twelve Federal Reserve Banks throughout the United States, the Directors are subject to the requirements of section 208. Each of the twelve banks has nine Directors, three of whom represent the interests of that Bank's stockholding member banks, and six of whom represent the interests of the public, with due consideration to the interests of commerce, industry, services, labor and consumers. Because of their ties to the financial services industry and their communities, it is likely that at least some of the Directors will have financial conflicts with their duties. The proposed regulation at § 2640.203(h) would exempt the Directors from the application of section 208 for two primary activities: the role of Directors in establishing the interest rate to be charged on loans made by Reserve Banks, and the role the Directors may play in extending credit to healthy financial institutions or to financial institutions in hazardous

[6] In some cases, a person may be serving on an advisory committee in a representative capacity on behalf of a non-governmental organization, group or industry. Section 208 does not apply to committee members serving in a representative capacity because they are not considered special Government employees. Accordingly, a representative does not need a waiver or exemption as described in this proposed regulation in order to participate in committee matters. *See generally* OGE Informal Advisory Letter 82x22 (July 9, 1982), OGE Advisory Publication, p. 325.

condition. The exemptions, which were first issued by the Federal Reserve in 1978 and which are currently set forth in 12 CFR 264a.5, are necessary to resolve any possible conflict between the Directors' statutorily mandated representational function and the performance of their official duties.

In general, proposed § 2640.203(h) would permit a Federal Reserve Director to act in matters involving (1) the establishment of rates to be charged member banks for advances and discounts; (2) approval or ratification of extensions of credit, advances or discounts to depository institutions that are not in a hazardous financial condition; (3) approval or ratification of extensions of credit, advances or discounts to depository institutions that are in a hazardous condition as determined by the President of the Bank in accordance with 12 CFR 264a.3, but only when certain conditions are met; and (4) consideration of monetary policy matters, regulations, statutes, or other similar matters of broad applicability. As described above, these exemptions would simply continue existing regulatory exemptions for Reserve Bank Directors.

9. Medical Products and Devices

Section 2640.203(i) would contain an exemption for special Government employees who serve on advisory committees considering the approval or classification of medical products or devices. Often these special Government employees are employed by hospitals or other medical facilities that purchase these products or devices for use by their patients. Similarly, the special Government employees may prescribe the product or device for their own patients. In some cases, the employees may have a disqualifying financial interest in the matters under consideration by the committee because their employers' profits from providing these products or devices to patients by billing more than the cost of the item. In other cases, it is possible that a special Government employee with private patients could affect his own financial interest by, for example, deciding not to reclassify a drug to permit it to be sold over the counter, thereby resulting in a loss of patients who would otherwise have to seek a prescription from him.

The Office of Government Ethics believes that the types of financial interests described in the proposed exemption are inconsequential enough that special Government employees who serve on these types of advisory committees can be expected to act impartially. Of course, the exemption would apply only when the financial interest is of the type described in the regulation. Other types of financial interests, such as those arising from the ownership of stock in the manufacturer of the product or device, or employment by the manufacturer would not be not covered by this exemption. Such interests may be covered by other exemptions (such as proposed § 2640.202(a)) or an employee may obtain an individual waiver under section 208(b)(1) or (b)(3).

*D. Prohibited Financial Interests*

The provision at § 2640.204 of this proposed regulation would make clear that none of the exemptions apply to financial interests held or acquired in violation of a statute or agency supplemental regulation issued under 5 CFR 2635.105, or that are otherwise prohibited under 5 CFR 2635.403(b). This provision would prevent an employee who knowingly acquires a prohibited financial interest and who also participates in an agency matter affecting that interest, from asserting that the exemption provisions described in this rule preclude the Government from pursuing appropriate sanctions against him.

*E. Employee Responsibility*

Section 2640.205 as proposed states that each employee assigned to a matter which may affect a financial interest within the scope of section 208(a) is responsible for determining, prior to taking action, whether an exemption permits him to participate in the matter. If an employee is unsure whether an exemption is applicable in a particular situation, he should consult with the agency ethics official prior to taking action. As proposed, this regulation would be interpreted strictly, so that an employee who has a financial interest in a matter could not act in the matter in reliance on any provision in the regulation unless the interest were specifically exempted by the regulation. Alternatively, an employee may seek an individual waiver under 18 U.S.C. 208(b)(1) or (b)(3).

*F. Existing Agency Exemptions*

This proposed rule at § 2640.206 contains a provision designed to resolve questions concerning reliance on waivers issued by agency regulation prior to November 30, 1989, the effective date of the 1989 Ethics Reform Act revisions to 18 U.S.C. 208. The provision would make clear that an employee who, prior to the effective date of this regulation, participated in a matter in which he had a financial interest acted in accordance with applicable regulations if he acted in reliance on a regulatory waiver issued by his employing agency under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989.

**III. Waivers Issued Pursuant to 18 U.S.C. 208(b)(1)**

In some situations an employee may have a disqualifying financial interest which would not be exempted from the requirements of section 208(a) by this proposed regulation as being too remote or inconsequential. For example, some disqualifying financial interests are simply too difficult to define precisely enough in a regulation, while in other cases OGE is unable to describe with enough particularity the matters in which the exemptions would apply. In circumstances such as these, an agency may determine pursuant to section 208(b)(1) that an individual waiver should be granted to the employee. The determination required in these cases is that the employee's disqualifying interest in the matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government expects from the employee. In short, the agency must determine whether the employee's interest in the matter is not so significant that the employee can be relied upon to act or appear to act impartially in the matter. While final determinations in these matters rest with the agencies, this proposed regulation at § 2640.301 would establish uniform procedural requirements for such waivers and would provide guidance to agencies in making the determinations necessary for the granting of waivers.

An agency granting a waiver pursuant to section 208(b)(1) should observe a number of procedural requirements. First, the financial interest involved, and the nature and circumstances of the particular Government matter or matters in which the employee would act must be fully disclosed to the Government official responsible for issuing the waiver. If the official decides to grant the waiver, it must be in writing and be issued by the person responsible for the employee's appointment (or by a person to whom the responsibility to issue such waivers has been delegated.) A waiver must be issued prior to any action on the matter by the employee. The waiver should describe the matter or matters to which it applies, the employee's role in these matters, and any limitations to be placed on the employee's involvement in them. There is no requirement in the rule as proposed that the disqualifying financial interest, the particular matter to which the waiver applies, or the

employee's role in the matter be described with any specific degree of particularity. This would, for example, permit the agency issuing the waiver to describe the employee's duties in a general way, or to describe a class of matters to which the waiver would apply. Of course, agencies should endeavor to formulate waivers with enough specificity that a member of the public would have a clear understanding of the circumstances to which the waiver applies. In addition, the waiver must be based on a determination that the employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. A waiver may apply to both present and future financial interests provided that the interests are described with specificity.

In granting a waiver, section 208(b)(1) specifically requires an agency to determine whether the employee's financial interest in the matter is not so substantial as to affect the integrity of the employee's services to the Government. In large part, this determination depends on the size of the financial interest, its importance to the employee, and the employee's ability to affect his own financial interest directly. Information concerning an employee's good character and past record are irrelevant in making the waiver determination and should not be relied upon as a basis for granting a waiver.

The proposed regulation at § 2640.301(b) lists five factors that an agency official may consider in judging the propriety of granting a waiver. First, the responsible official should consider the type of interest creating the disqualification, such as stock, bonds, or a job offer. Consideration should also be given to the identity of the person whose financial interest is involved. In particular, if the financial interest is not the employee's own, but is the interest of one of the other persons specified in section 208, the agency official should examine the relationship of the person to the employee. Employment interests often create ties stronger than mere stock ownership that might affect an employee's judgment. Moreover, the ethics official should consider the effect of the matter on the interests of the person specified in the statute, not just the ultimate effect, if any, on the interests of the employee. Next, the official should consider the dollar value of the disqualifying interest to the extent it is known or can be estimated, and the value of the financial instrument or holding which is creating the disqualifying interest. Finally, the responsible official should consider the nature and importance of the employee's role in the matter in which he would be allowed to act, including the extent to which he would have to exercise discretion. For example, the agency should consider whether the employee will play a primary role in dealing with an entity in which he has a financial interest, or contribute substantially to a decision affecting such an entity, or play a peripheral role in a matter involving the entity.

Agencies may also consider certain other factors when deciding whether an employee's financial interest is substantial enough to affect the integrity of his services. A responsible official may consider the sensitivity of the agency matter in which the employee would act, the need for the employee's services in the particular matter, and whether adjustments could be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned. A decision by the responsible official to grant a waiver pursuant to section 208(b)(1) constitutes a determination under 5 CFR 2635.502 of the Standards of Ethical Conduct that the Government's interest in having an employee participate in a particular matter outweighs any questions concerning an employee's impartiality.

## IV. Waivers Issued Pursuant to 18 U.S.C. Section 208(b)(3)

This proposed regulation would also address the authority of agencies to issue waivers pursuant to section 208(b)(3) for special Government employees who are members of an advisory committee established under the Federal Advisory Committee Act (5 U.S.C. app.) or nominees to such a committee if these individuals have a disqualifying financial interest. The basis for a determination to grant a waiver under section 208(b)(3) is somewhat different from that which underlies a waiver granted pursuant to section 208(b)(1). To allow an individual to participate in advisory committee matters from which he would otherwise be disqualified, the agency must balance the need for the individual's services against the potential for a conflict of interest created by the employee's disqualifying interest. After reviewing the financial disclosure statement filed by the individual pursuant to the Ethics in Government Act of 1978, the official responsible for appointing the individual to the committee must certify that the need for the individual's services outweighs the potential for conflict created by the financial interest involved.

In making this certification, § 2640.302(b) as proposed would instruct the responsible official to consider the uniqueness of the individual's qualifications and the difficulty of finding a similarly qualified individual to serve on the committee. As in the case of making a determination whether a waiver should be granted under section 208(b)(1), the official should also consider the type of interest that is creating the disqualification, as well as its dollar value to the extent it is known or can be estimated. Consideration should also be given to the identity of the person whose financial interest is creating the disqualification and that person's relationship to the employee. Finally, the official should consider the likelihood that the advisory committee will consider matters which will affect the individual's financial interests individually or particularly.

The regulation at proposed § 2640.302(a) also states that the agency should follow procedural requirements similar to those for granting individual waivers under 18 U.S.C. 208(b)(1). Waivers issued pursuant to section 208(b)(3) may be applicable only to special Government employee members or prospective members of advisory committees within the meaning of the Federal Advisory Committee Act.

## V. Consultation and Notification Concerning Waivers

Proposed § 2640.303, in accordance with section 301(d) of Executive Order 12674, would require a responsible official, when practicable, to consult formally or informally with the Office of Government Ethics prior to granting a waiver under either § 2640.301 or § 2640.302 as proposed. The consultation need not take any particular form and may be done informally by telephone. While these waiver determinations are within an agency's discretion, consultation with OGE affords the agency official an opportunity to benefit from OGE's experience and knowledge as to how these provisions are generally interpreted and whether the agency's proposed solution is legally sufficient and is within the range of reasonable interpretations. After issuance of a waiver, a copy of the waiver must be transmitted promptly to OGE. *See* section 301(d) of E.O. 12674, as modified, and 5 CFR 2635.402(d)(4).

## VI. Public Availability of Waivers

Agencies are generally required to make copies of waivers issued pursuant

to 18 U.S.C. 208(b)(1) or (b)(3) available to the public upon request. *See* 18 U.S.C. 208(d)(1) and proposed § 2640.304. The procedures to be used for providing access to these waivers are those which are used for public access to financial disclosure statements under the Ethics in Government Act. The procedures are described at 5 CFR 2634.603.

There are certain limitations on the public availability of waivers granted pursuant to 18 U.S.C. 208(b)(1) and (b)(3). Agencies may withhold from disclosure any information contained in a waiver which would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. In addition, for waivers issued under section 208(b)(3), an agency must withhold any information in the certification concerning an individual's financial interest that is more extensive than what is required to be disclosed by the individual in his financial disclosure statement under the Ethics Act. Agencies should also withhold information in any waiver which is otherwise subject to a prohibition on public disclosure under law.

## VII. Matters of Regulatory Procedure

*Administrative Procedure Act*

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before November 13, 1995. The Office of Government Ethics will review all comments received and consider any modifications to this rule as proposed which appear warranted before adopting a final rule on this matter.

*Executive Order 12866*

In promulgating this proposed regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been reviewed by the Office of Management and Budget under that Executive order.

*Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

*Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

### List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: August 9th, 1995.

**Donald E. Campbell,**

*Deputy Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend title 5, chapter XVI, subchapter B of the Code of Federal Regulations by adding a new part 2640 to read as follows:

## PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

### Subpart A—General Provisions

Sec.
2640.101 Purpose.
2640.102 Definitions.
2640.103 Prohibition.

### Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

2640.201 Exemptions for interests in mutual funds, common trust funds, unit investment trusts, and employee benefit plans.
2640.202 Exemptions for interests in securities.
2640.203 Miscellaneous exemptions.
2640.204 Prohibited financial interests.
2640.205 Employee responsibility.
2640.206 Existing agency exemptions.

### Subpart C—Individual Waivers

2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).
2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).
2640.303 Consultation and notification regarding waivers.
2640.304 Public availability of agency waivers.

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

## Subpart A—General Provisions

### § 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. This regulation describes those financial interests. The regulation also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208(b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

### § 2640.102 Definitions.

For purposes of this part:

(a) *Common trust fund* means any fund as defined in 26 U.S.C. 584. A common trust fund is maintained by a bank exclusively for the collective investment and reinvestment of monies contributed to the fund in its capacity as trustee, executor, administrator, or guardian. Common trust funds are collections of individually established funds for which a bank acts as fiduciary. The bank pools the funds for investment purposes.

(b) *Diversified* means that the fund, trust or plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of:

(1) A mutual fund, means the assets of the mutual fund are sufficiently varied that it meets the requirements of section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), for a diversified company;

(2) A common trust fund, means the fund is subject to the rules regarding diversification established by the Office of the Comptroller of the Currency at 12 CFR 9.18;

(3) A unit investment trust, means the assets of the trust are sufficiently varied that it meets the requirements of section 851 of the Internal Revenue Code, 26 U.S.C. 851, for a regulated investment company; and

(4) An employee benefit plan, means that the plan's trustee has a written policy of varying plan investments.

**Note:** A mutual fund meets the requirements of Section 5(b)(1) of the Investment Company Act of 1940 if it is a ''diversified company.'' A unit investment trust is diversified in accordance with 26 U.S.C. 851 if it is a ''regulated investment company.'' An employee can determine if a fund or trust meets these standards by locating a description of the fund as a ''diversified company'' or the trust as a ''regulated investment company'' in the prospectus for the fund or trust or by calling a broker or the manager of the trust or fund. A common trust fund maintained by a national or State bank can be presumed to be diversified in accordance with the standards for diversification set by the Office of the Comptroller of the Currency. An employee benefit plan is diversified if the plan manager has a written policy of varying assets. This policy might be found in materials describing the plan or may be obtained in a written statement from the plan manager.

It is important to note that a mutual fund, unit investment trust, common trust fund, or employee benefit plan that is diversified for purposes of this regulation may not necessarily be an excepted investment fund (EIF) for purposes of reporting financial interests pursuant to 5 CFR 2634.311(c). In some cases, an employee may have to report the underlying assets of a fund, trust or plan on his financial disclosure statement even though an exemption set forth in this regulation would permit the employee to participate in a matter affecting the underlying assets of the fund, trust or plan. Conversely, there may be situations in which no exemption in this regulation is applicable to the assets of a fund, trust or plan which is properly reported as an EIF on the employee's financial disclosure statement.

(c) *Employee* means an officer or employee of the executive branch of the United States, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia. The term also includes a special Government employee as defined in 18 U.S.C. 202.

(d) *Employee benefit plan* means a plan as defined in section 3(3) of the Employee Retirement Security Act of 1974, 29 U.S.C. 1002(3), and that has more than one participant. An employee benefit plan is any plan, fund or program established or maintained by an employer or an employee organization, or both, to provide its participants medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income.

(e) *He, his,* and *him* include she, hers, and her.

(f) *Holdings* means portfolio of investments.

(g) *Independent trustee* means a trustee who is independent of the sponsor and the participants in a plan, or is a registered investment advisor.

(h) *Institution of higher education* means an educational institution as defined in 20 U.S.C. 1141 (a).

(i) *Issuer* means a person who issues or proposes to issue any security, or has any outstanding security which it has issued.

(j) *Long-term Federal Government security* means a bond or note with a maturity of one year or more issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(k) *Municipal security* means direct obligation of, or obligation guaranteed as to principal or interest by, a State (or any of its political subdivisions, or any municipal corporate instrumentality of one or more States,) or the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(l) *Mutual fund* means an entity which is registered as a management company under the Investment Company Act of 1940, as amended, (15 U.S.C. 80a–1 *et seq.*). For purposes of this rule, the term mutual fund includes open-end and closed-end mutual funds and registered money market funds.

(m) *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.

(n) *Pension plan* means any plan, fund or program maintained by an employer or an employee organization, or both, to provide retirement income to employees, or which results in deferral of income for periods extending to, or beyond, termination of employment.

(o) *Person* means an individual, corporation, company, association, firm, partnership, society or any other organization or institution.

(p) *Publicly traded security* means a security as defined in paragraph (r) of this section and which is:

(1) Registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and listed on a national or regional securities exchange or traded through NASDAQ;

(2) Issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, as amended, (15 U.S.C. 80a–8); or

(3) A corporate bond registered as an offering with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and issued by an entity whose stock is a publicly traded security.

**Note:** National securities exchanges include the American Stock Exchange and the New York Stock Exchange. Regional exchanges include the Boston, Cincinnati, Intermountain (Salt Lake City), Midwest (Chicago), Pacific (Los Angeles and San Francisco), Philadelphia (Philadelphia and Miami), and Spokane stock exchanges.

(q) *Sector mutual fund* means a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, mutual fund, long-term Federal Government security, and limited partnership interest.

(s) *Short-term Federal Government security* means a bill with a maturity of less than one year issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(t) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(u) *Unit investment trust* means an investment company as defined in 15 U.S.C. 80a–4(2).

**§ 2640.103 Prohibition.**

(a) *Statutory prohibition.* Unless permitted by 18 U.S.C. 208(b)(1)–(4), an employee is prohibited by 18 U.S.C. 208(a) from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The restrictions of 18 U.S.C. 208 are described more fully in 5 CFR 2635.401 and 2635.402.

(1) *Particular matter.* The term ''particular matter'' includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and

may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

*Example 1:* The Overseas Private Investment Corporation decides to hire a contractor to conduct EEO training for its employees. The award of a contract for training services is a particular matter.

*Example 2:* The spouse of a high level official of the Internal Revenue Service (IRS) requests a meeting on behalf of her client (a major U.S. corporation) with IRS officials to discuss a provision of IRS regulations governing depreciation of equipment. The spouse will be paid a fee by the corporation for arranging and attending the meeting. The consideration of the spouse's request and the decision to hold the meeting are particular matters in which the spouse has a financial interest.

*Example 3:* A regulation published by the Department of Agriculture applicable only to companies that operate meat packing plants is a particular matter.

*Example 4:* A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.

*Example 5:* The allocation of additional resources to the investigation and prosecution of white collar crime by the Department of Justice is not a particular matter. Similarly, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons, or a discrete and identifiable group of persons to constitute participation in a particular matter.

*Example 6:* The recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability are not particular matters. Discussions about economic growth policies are directed to the interests of a large and diverse group of persons.

*Example 7:* The formulation and implementation of the response of the United States to the military invasion of a U.S. ally is not a particular matter. General deliberations, decisions and actions concerning a response are based on a consideration of the political, military, diplomatic and economic interests of every sector of society and are too diffuse to be focused on the interests of specific individuals or entities. However, at the time consideration is given to actions focused on specific individuals or entities, or a discrete and identifiable class of individuals or entities, the matters under consideration would be particular matters. These would include, for example, discussions whether to close a particular oil pumping station or pipeline in the area where hostilities are taking place, or a decision to seize a particular oil field or oil tanker.

*Example 8:* A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, the implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

(2) *Personal and substantial participation.* To participate ''personally'' means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate ''substantially'' means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

*Example 1:* An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns $10,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered ''substantial'' as defined in the statute.

(3) *Direct and predictable effect.* (i) A particular matter will have a ''direct'' effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.

(ii) A particular matter will have a ''predictable'' effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

*Example 1:* An attorney at the Department of Justice is working on a case in which several large companies are defendants. If the Department wins the case, the defendants may be required to reimburse the Federal Government for their failure to adequately perform work under several contracts with the Government. The attorney's spouse is a salaried employee of one of the companies, working in a division that has no involvement in any of the contracts. She does not participate in any bonus or benefit plans tied to the profitability of the company, nor does she own stock in the company. Because there is no evidence that the case will have a direct and predictable effect on whether the spouse will retain her job or maintain the level of her salary, or whether the company will undergo any reorganization that would affect her interests, the attorney would not have a disqualifying financial interest in the matter. However, the attorney must consider, under the requirements of part 2635.502 of this chapter, whether his impartiality would be questioned if he continues to work on the case.

*Example 2:* A special Government employee (SGE) whose principal employment is as a researcher at a major university is appointed to serve on an advisory committee that will evaluate the safety and effectiveness of a new medical device to regulate arrhythmic heartbeats. The device is being developed by Alpha Medical Inc., a company which also has contracted with the SGE's university to assist in developing another medical device related to kidney dialysis. There is no evidence that the advisory committee's determinations concerning the medical device under review will affect Alpha Medical's contract with the university to develop the kidney dialysis device. The SGE may participate in the committee's deliberations because those deliberations will not have a direct and predictable effect on the financial interests of the researcher or his employer.

*Example 3:* The SGE in the preceding example is instead asked to serve on an advisory committee that has been convened

to conduct a preliminary evaluation of the new kidney dialysis device developed by Alpha Medical under contract with the employee's university. Alpha's contract with the university requires the university to undertake additional testing of the device to address issues raised by the committee during its review. The committee's actions will have a direct and predictable effect on the university's financial interest.

*Example 4:* An engineer at the Environmental Protection Agency (EPA) was formerly employed by Waste Management, Inc., a corporation subject to EPA's regulations concerning the disposal of hazardous waste materials. Waste Management is a large corporation, with less than 5% of its profits derived from handling hazardous waste materials. The engineer has a vested interest in a defined benefit pension plan sponsored by Waste Management which guarantees that he will receive payments of $500 per month beginning at age 62. As an employee of EPA, the engineer has been assigned to evaluate Waste Management's compliance with EPA hazardous waste regulations. Because there is no evidence that the engineer's monitoring activities will affect Waste Management's ability or willingness to pay his pension benefits when he is entitled to receive them at age 62, he has no disqualifying financial interest in the Government matter. The EPA's monitoring activities will not have a direct and predictable effect on the employee's financial interest in his Waste Management pension. However, the engineer should consider whether, under the standards set forth in 5 CFR 2635.502, a reasonable person would question his impartiality if he acts in a matter in which Waste Management is a party.

(b) *Disqualifying financial interests.* For purposes of 18 U.S.C. 208(a) and this part, the term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

*Example 1:* An employee of the Department of the Interior owns transportation bonds issued by the State of Minnesota. The proceeds of the bonds will be used to fund improvements to certain State highways. In her official position, the employee is evaluating an application from Minnesota for a grant to support a State wildlife refuge. The employee's ownership of the transportation bonds does not create a disqualifying financial interest in Minnesota's application for wildlife funds because approval or disapproval of the grant will not in any way affect the current value of the bonds or have a direct and predictable effect on the State's ability or willingness to honor its obligation to pay the bonds when they mature.

*Example 2:* An employee of the Bureau of Land Management owns undeveloped land adjacent to Federal lands in New Mexico. A portion of the Federal land will be leased by the Bureau to a mining company for exploration and development, resulting in an increase in the value of the surrounding privately owned land, including that owned by the employee. The employee has a financial interest in the lease of the Federal land to the mining company and, therefore, cannot participate in Bureau matters involving the lease unless he obtains an individual waiver pursuant to 18 U.S.C. 208(b)(1).

*Example 3:* A special Government employee serving on an advisory committee studying the effectiveness of a new arthritis drug is a practicing physician with a specialty in treating arthritis. The drug being studied by the committee would be a low cost alternative to current treatments for arthritis. If the drug is ultimately approved, the physician will be able to prescribe the less expensive drug. The physician does not own stock in, or hold any position, or have any business relationship with the company developing the drug. Moreover, there is no indication that the availability of a less expensive treatment for arthritis will increase the volume and profitability of the doctor's private practice. Accordingly, the physician has no disqualifying financial interest in the actions of the advisory committee.

(c) *Interests of others.* The financial interests of the following persons will serve to disqualify an employee to the same extent as the employee's own interests:

(1) The employee's spouse;

(2) The employee's minor child;

(3) The employee's general partner;

(4) An organization or entity which the employee serves as officer, director, trustee, general partner, or employee; and

(5) A person with whom the employee is negotiating for, or has an arrangement concerning, prospective employment.

*Example 1:* An employee of the Consumer Product Safety Commission (CPSC) has two minor children who have inherited shares of stock from their grandparents in a company that manufactures small appliances. Unless an exemption is applicable under section 2640.202 of this part or he obtains a waiver under 18 U.S.C. 208(b)(1), the employee is disqualified from participating in a CPSC proceeding to require the manufacturer to remove a defective appliance from the market.

*Example 2:* A newly appointed employee of the Department of Housing and Urban Development (HUD) is a general partner with three former business associates in a partnership that owns a travel agency. The employee knows that his three general partners are also partners in another partnership that owns a HUD-subsidized housing project. Unless he receives a waiver pursuant to 18 U.S.C. 208(b)(1) permitting him to act, the employee must disqualify himself from particular matters involving the HUD-subsidized project which his general partners own.

*Example 3:* The spouse of an employee of the Department of Health and Human Services (HHS) works for a consulting firm that provides support services to colleges and universities on research projects they are conducting under grants from HHS. The spouse is a salaried employee who has no direct ownership interest in the firm such as through stockholding, and the award of a grant to a particular university will have no direct and predictable effect on his continued employment or his salary. Because the award of a grant will not affect the spouse's financial interest, section 208 would not bar the HHS employee from participating in the award of a grant to a university to which the consulting firm will provide services. However, the employee must consider whether her participation in the award of the grant would be barred under the impartiality provision in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635.502.

(d) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of an exemption or waiver described in subpart B or subpart C of this part, or the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignments should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics, is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement, or is

required to do so by agency supplemental regulation issued pursuant to 5 CFR 2635.105. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

*Example 1:* The supervisor of an employee of the Department of Education asks the employee to attend a meeting on his behalf on developing national standards for science education in secondary schools. When the employee arrives for the meeting, she realizes one of the participants is the president of Education Consulting Associates (ECA), a firm which has been awarded a contract to prepare a bulletin describing the Department's policies on science education standards. The employee's spouse has a subcontract with ECA to provide the graphics and charts that will be used in the bulletin. Because the employee realizes that the meeting will involve matters relating to the production of the bulletin, the employee properly decides that she must disqualify herself from participating in the discussions. After withdrawing from the meeting, the employee should notify her supervisor about the reason for her disqualification. She may elect to put her disqualification statement in writing, or to simply notify her supervisor orally. She may also elect to notify appropriate coworkers about her need to disqualify herself from this matter.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, an employee is no longer prohibited from acting in the particular matter.

(1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this chapter, or if the agency determines in accordance with § 2635.403(b) of this chapter that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

## Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

### § 2640.201 Exemptions for interests in mutual funds, common trust funds, unit investment trusts, and employee benefit plans.

(a) *Diversified mutual funds, common trust funds, and unit investment trusts.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting one or more holdings of a diversified mutual fund, a diversified common trust fund, or a diversified unit investment trust, where the disqualifying financial interest in the matter arises because of the direct or beneficial ownership by the employee, or any other person specified in section 208(a), of an interest in the trust or fund.

*Example 1:* An employee owns shares worth $100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a ''diversified management company.'' The employee may participate in agency matters affecting the computer company.

*Example 2:* An employee has owned shares in five different mutual funds for a number of years. Although each of the funds has numerous varied holdings, the employee is not sure whether the funds are actually ''diversified'' as defined in § 2640.102(b). After searching his records, the employee finds prospectuses for three of the funds. One of these prospectuses indicates that the mutual fund is a ''diversified company'' and a second states that the fund is a ''diversified management company.'' Neither indicates that the fund has a policy of concentrating its investments in a particular sector. Both funds are ''diversified'' mutual funds and the employee is not disqualified from acting in matters affecting the underlying holdings of the funds. For the remaining three funds, the employee calls the telephone number provided by the fund's sponsor for investor inquiries. After ascertaining that all three funds are ''diversified companies'' and none has a policy of concentrating investments in a particular sector, the employee is free to act in matters affecting the funds' holdings. Once this determination has been made, no further action is required and the employee may rely on the exemption in § 2640.201(a).

*Example 3:* An auditor at the Internal Revenue Service (IRS) is one of the beneficiaries of a trust established by her father to provide a life income for his children. The trust is managed by a bank as a common trust fund. The IRS auditor may assume that the trust's assets are diversified and may act in IRS matters that would affect the trust's underlying assets.

*Example 4:* A nonsupervisory employee of the Department of Energy owns shares in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in § 2640.201(a) to act in matters affecting a utility company whose stock is part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(b)(1). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act. Moreover, depending upon the value of the employee's interest in the fund and the type of particular matter in which he would participate, one of the exemptions at § 2640.202(a)–(c) for interests arising from publicly traded securities may be applicable.

(b) *Sector mutual funds.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of the direct or beneficial ownership by the employee, or any other person specified in section 208, of an interest in the fund.

*Example 1:* An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

(c) *Employee benefit plans.* An employee may participate in:

(1) Any particular matter, whether of general applicability or involving specific parties, affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership by the employee, or any other person specified in section 208(a), in:

(i) The Thrift Savings Plan for Federal employees described in 5 U.S.C. 8437;

(ii) A pension plan established or maintained by a State government or any political subdivision of a State government for its employees; or

(iii) A diversified employee benefit plan, provided:

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person

specified in section 208(a), does not participate in the selection of the plan's investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds, which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

**Note:** Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing plans for purposes of this section. However, for the exemption to apply, 401(k) plans must meet the requirements of § 2640.201(c)(1)(iii)(A).

(2) Particular matters of general applicability, such as rulemaking, affecting the State or local government sponsor of a State or local government pension plan described in § 2640.201(c)(1)(ii) where the only disqualifying financial interest in the matter arises because of participation by the employee, or other person specified in section 208(a), in the plan.

*Example 1:* An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this regulation.

*Example 2:* An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all States, including the State of New York, such as the drafting and promulgation of a rule requiring States to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the State for additional Federal funding for administrative support services, if that matter would affect the State's ability or willingness to honor its obligation to pay her pension benefits.

**§ 2640.202 Exemptions for interests in securities.**

(a) *De minimis exemption for all matters.* An employee may participate in any particular matter involving specific parties, in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, his spouse or minor children of securities issued by one or more entities which are parties to the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government securities or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all parties does not exceed $5,000.

*Example 1:* An employee owns 100 shares of publicly traded stock valued at $3,000 in XYZ Corporation. As part of his official duties, the employee is evaluating bids for performing computer maintenance services at his agency and discovers that XYZ Corporation is one of the companies that has submitted a bid. The employee is not required to recuse himself from continuing to evaluate the bids.

*Example 2:* In the preceding example, the employee and his spouse each own 100 shares of stock in XYZ Corporation, resulting in ownership of $6,000 worth of stock by the employee and his spouse. The exemption in § 2640.202(a) would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds $5,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

*Example 3:* An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than $5,000. During the time the contract is being performed, however, the value of the employee's stock increases to $7,500. When the employee knows that the value of his stock exceeds $5,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1).

(b) *De minimis exemption when issuer is not a party.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government securities or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under paragraph (a) of this section) does not exceed $25,000.

*Example 1:* An attorney at the Department of Labor is handling litigation brought by Allied Chemical Corporation challenging a provision in the Department's health and safety regulations that apply to companies which manufacture certain types of ether. If the plaintiff is successful, all companies subject to this provision in the health and safety rules will be able to reduce expenditures required for complying with the regulations. The attorney does not own any stock in Allied Chemical Corporation, but does own $15,000 worth of stock in another company not a party to the litigation, but which is subject to the regulatory provision at issue in the litigation. The attorney may continue to handle the litigation.

*Example 2:* A second attorney at the Department of Labor is asked to assist in handling the same litigation brought by Allied Chemical Corporation, as described in the preceding example. However, this attorney owns $4,000 worth of stock in Allied Chemical, as well as $12,000 worth of stock in each of two other chemical companies which are not parties to the litigation, but which are subject to the regulatory provision at issue and which would be affected by the outcome of the litigation. Unless the attorney obtains an individual waiver pursuant to section 208(b)(1), or sells a portion of his stock, he may not participate in matters involving this litigation. The aggregate market value of his holdings in affected entities exceeds $25,000.

(c) *De minimis exemption for matters of general applicability.* An employee may participate in any particular matter of general applicability not involving specific parties, such as rulemaking, in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government securities or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in:

(i) Any one such entity does not exceed $25,000; and

(ii) All entities affected by the matter does not exceed $50,000.

*Example 1:* The Department of Commerce is in the process of formulating a regulation concerning unfair trade practices. The regulation will affect all foreign companies that sell automobiles in the United States. An employee of the Department who is assisting in drafting the regulation owns $10,000 worth of stock in one Japanese automobile manufacturer, $20,000 worth of stock in a German automobile manufacturer, and

$7,500 worth of stock in a Swedish automobile company. Even though the employee owns $37,500 worth of stock in companies that will be affected by the regulation, she may participate in drafting the regulation because the value of the securities she owns does not exceed $25,000 in any one affected company and the total value of stock owned in all affected companies does not exceed $50,000.

*Example 2:* A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Departmentwide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns $10,000 worth of shares in a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. Because the fund is not a ''diversified mutual fund'' as defined in § 2640.102(b), the exemption at § 2640.201(a) is not applicable. However, because the fund is a ''publicly traded security'' as defined in § 2640.102(q), the exemption for financial interests arising from ownership of a de minimis amount of securities at § 2640.202(c) will permit the employee to participate on the task force.

(d) *Exemption for short-term Federal Government securities.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, or any other person specified in section 208(a), of short-term Federal Government securities.

(e) *Exemption for interests of tax-exempt organizations.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, in which the disqualifying financial interest arises from the ownership of publicly traded or municipal securities, or long-term Federal Government securities by an organization which is tax exempt pursuant to 26 U.S.C. 501(c)(3), and of which the employee is an unpaid officer, director, or trustee, or an employee, if:

(1) The matter affects only the organization's investments, not the organization directly;

(2) The employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments such as stocks, bonds, or mutual funds;

(3) The organization's holdings in one or more affected issuers represent no more than 20% of the organization's total investment portfolio; and

(4) The organization's only relationship to the issuer, other than that which arises from routine commercial transactions, is that of investor.

*Example 1:* An employee of the Federal Reserve is a director of the National Association to Save Trees (NAST), an environmental organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code. The employee knows that NAST has an endowment fund that is partially (about 10% of the endowment's value) invested in the publicly traded stock of Computer Inc. The employee's position at the Federal Reserve involves the procurement of computer software, including software marketed by Computer Inc. The employee may participate in the procurement of software from Computer Inc. provided that he is not involved in selecting NAST's investments, and that NAST has no relationship to Computer Inc. other than as an investor in the company and routine purchaser of Computer Inc. software.

(f) *Exemption for certain interests of general partners.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, in which the disqualifying financial interest arises from:

(1) The ownership of publicly traded securities, long-term Federal Government securities, or municipal securities by the employee's general partner, *provided:*

(i) Ownership of the securities is not related to the partnership between the employee and his general partner, and

(ii) The value of the securities does not exceed $200,000; or

(2) Any interest of the employee's general partner if the employee's relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

*Example 1:* An employee of the Department of Transportation is a general partner in a partnership that owns commercial property. The employee knows that one of his partners owns stock in an aviation company valued at $100,000 because the stock has been pledged as collateral for the purchase of the commercial property by the partnership. In the absence of an individual waiver under 18 U.S.C. 208(b)(1), the employee may not act in a matter affecting the aviation company. Because the stock has been pledged as collateral, ownership of the securities is related to the partnership between the employee and his general partner.

*Example 2:* An employee of the Pension Benefit Guaranty Corporation (PBGC) has a limited partnership interest in Ambank Partners, a large partnership with more than 500 limited partners. The partnership assets are invested in the securities of various financial institutions. Ambank's general partner is Capital Investment Services, an investment firm whose pension plan for its own employees is being examined by the PBGC for possible unfunded liabilities. Even though the employee's general partner (Capital Investment Services) has a financial interest in PBGC's review of the pension plan, the employee may participate in the review because his relationship with his general partner is that of a limited partner in a partnership that has at least 100 limited partners.

**§ 2640.203 Miscellaneous exemptions.**

(a) *Hiring decisions.* An employee may participate in a hiring decision involving an applicant who is currently employed by a corporation that issues publicly traded securities, if the disqualifying financial interest arises from:

(1) Ownership by the employee, or any other person specified in section 208, of publicly traded securities issued by the corporation; or

(2) Participation by the employee, or any other person specified in section 208, in a vested pension plan sponsored by the corporation.

(b) *Employees on leave from institutions of higher education.* An employee on a leave of absence from an institution of higher education may participate in any particular matter of general applicability, not involving specific parties, affecting the financial interests of the institution from which he is on leave, *provided* that the matter will not have a special or distinct effect on that institution other than as part of a class.

*Example 1:* An employee at the Department of Defense (DOD) is on a leave of absence from his position as a tenured Professor of Engineering at the University of California (UC) at Berkeley. While at DOD, he is assigned to assist in developing a regulation which will contain new standards for the oversight of grants given by DOD. Even though the University of California at Berkeley is a DOD grantee, and will be affected by these new monitoring standards, the employee may participate in developing the standards because UC Berkeley will be affected only as part of the class of all DOD grantees. However, if the new standards would affect the employee's own financial interest, such as by affecting his tenure or his salary, the employee could not participate in the matter unless he first obtains an individual waiver under section 208(b)(1).

*Example 2:* An employee on leave from a university could not participate in the development of an agency program of grants specifically designed to facilitate research in jet propulsion systems where the employee's university is one of just two or three universities likely to receive a grant under the new program. Even though the grant announcement is open to all universities, the employee's university is among the very few known to have facilities and equipment adequate to conduct the research. The matter would have a distinct effect on the institution other than as part of a class.

(c) *Multi-campus institutions of higher education.* An employee may participate in

any particular matter, whether of general applicability or involving specific parties, affecting one campus of a State multi-campus institution of higher education, if the employee's only disqualifying financial interest is employment in a position with no multi-campus responsibilities at a separate campus of the same multi-campus institution.

**Note:** Many State institutions and systems of higher education are sufficiently separate from each other that an exemption is not necessary to permit an employee to participate in matters affecting another State educational institution. Whether State institutions constitute a State ''system'' must be resolved on an individual basis by the agency employing the exemption.

*Example 1:* A special Government employee (SGE) member of an advisory committee convened by the National Science Foundation is a full-time professor in the School of Engineering at one campus of a State university. The SGE may participate in formulating the committee's recommendation to award a grant to a researcher at another campus of the same State university system.

*Example 2:* A member of the Board of Regents at a State university is asked to serve on an advisory committee established by the Department of Health and Human Services to consider applications for grants for human genome research projects. An application from another university that is part of the same State system will be reviewed by the committee. Unless he receives an individual waiver under section 208 (b)(1) or (b)(3), the advisory committee member may not participate in matters affecting the second university that is part of the State system because as a member of the Board of Regents, he has duties and responsibilities that affect the entire State educational system.

(d) *Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, where the disqualifying financial interest arises from Federal Government salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

(1) Make determinations that individually or specially affect his own Government salary and benefits, or Social Security or veterans' benefits; or

(2) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the Government salary or benefits, or Social Security or veterans' benefits of any other person specified in section 208.

**Note:** This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3110.

*Example 1:* An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

*Example 2:* A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

*Example 3:* An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees.

*Example 4:* A GS–14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

*Example 5:* An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

*Example 6:* An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

*Example 7:* An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

*Example 8:* Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans' benefits.

*Example 9:* A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specially affect his own award. Additionally, 5 U.S.C. 5384(c)(2) requires that a majority of the board's members be career SES employees.

*Example 10:* In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specially affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

(e) *Commercial discount and incentive programs.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting the sponsor of a discount, incentive or other similar benefit program if the only disqualifying financial interest arises because of the participation of the employee, or any other person specified in section 208, in the program, *provided:*

(1) The program is open to the general public; and

(2) Participation in the program involves no other financial interest in the sponsor, such as stockholding.

*Example 1:* An attorney at the Pension Benefit Guaranty Corporation who is a member of a frequent flier program sponsored by Alpha Airlines may assist in an action against Alpha for failing to make required payments to its employee pension fund, even though the agency action will cause Alpha to disband its frequent flier program.

(f) *Mutual insurance companies.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting a mutual insurance company if the only disqualifying financial interest arises because of the employee's interest or the interest of any other individual specified in section 208, as a policyholder, unless the matter would affect the company's ability to pay claims required under the terms of the policy or to pay the employee the cash value of the policy.

*Example 1:* An administrative law judge at the Department of Labor receives dividends from a mutual insurance company which he takes in the form of reduced premiums on his life insurance policy. The amount of the dividend is based upon the company's overall profitability. Nevertheless, he may preside in a Department hearing involving a

major corporation insured by the same company even though the insurance company will have to pay the corporation's penalties and other costs if the Department prevails in the hearing.

*Example 2:* An employee of the Department of Justice is assigned to prosecute a case involving the fraudulent practices of an issuer of junk bonds. While developing the facts pertinent to the case, the employee learns that the mutual life insurance company from which he holds a life insurance policy has invested heavily in these junk bonds. If the Government succeeds in its case, the bonds will be worthless and the corresponding decline in the insurance company's investments will impair the company's ability to pay claims under the policies it has issued. The employee may not continue assisting in the prosecution of the case unless he obtains an individual waiver pursuant to section 208(a)(1).

(g) *Exemption for employment interests of special Government employees serving on advisory committees.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in any particular matter of general applicability, not involving specific parties, where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, *provided* that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. For purposes of this provision, ''disqualifying financial interest'' arising from non-Federal employment does not include the interests of a special Government employee arising from the ownership of stock in his employer or prospective employer.

*Example 1:* A chemist employed by a major pharmaceutical company has been appointed to serve on an advisory committee established to develop recommendations for new standards for AIDS vaccine trials involving human subjects. Even though the chemist's employer is in the process of developing an experimental AIDS vaccine and therefore will be affected by the new standards, the chemist may participate in formulating the advisory committee's recommendations. The chemist's employer will be affected by the new standards only as part of the class of all pharmaceutical companies and other research entities that are attempting to develop an AIDS vaccine.

*Example 2:* The National Cancer Institute (NCI) has established an advisory committee to evaluate a university's performance of an NCI grant to study the efficacy of a newly developed breast cancer drug. An employee of the university may not participate in the evaluation of the university's performance because it is not a matter of general applicability.

*Example 3:* An engineer whose principal employment is with a major Department of Defense (DOD) contractor is appointed to serve on an advisory committee established by DOD to develop concepts for the next generation of laser-guided missiles. The engineer's employer, as well as a number of other similar companies, has developed certain missile components for DOD in the past, and has the capability to work on aspects of the newer missile designs under consideration by the committee. The engineer owns $20,000 worth of stock in his employer. Because the exemption for the employment interests of special Government employees serving on advisory committees does not extend to financial interests arising from the ownership of stock, the engineer may not participate in committee matters affecting his employer unless he receives an individual waiver under section 208(b)(1) or (b)(3), or determines that the exemption for interests in securities at § 2640.202(c) applies.

(h) *Directors of Federal Reserve Banks.* A Director of a Federal Reserve Bank or a branch of a Federal Reserve Bank may participate in the following matters, even though they may be particular matters in which he, or any other person specified in section 208(a), has a disqualifying financial interest:

(1) Establishment of rates to be charged for all advances and discounts by Federal Reserve Banks;

(2) Consideration of monetary policy matters, regulations, statutes and proposed or pending legislation, and other matters of broad applicability intended to have uniform application to banks within the Reserve Bank district;

(3) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has not been determined to be in a hazardous financial condition by the President of the Reserve Bank; or

(4) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has been determined to be in a hazardous financial condition by the President of the Reserve Bank, *provided that* the disqualifying financial interest arises from the ownership of stock in, or service as an officer, director, trustee, general partner or employee, of an entity other than the depository institution, or its parent holding company or subsidiary of such holding company.

(i) *Medical products and devices.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in Federal advisory committee matters concerning the approval or classification of medical products or devices if the disqualifying financial interest arises from:

(1) Employment by the special Government employee, or any other person specified in section 208(a), with a hospital or other similar medical facility whose only interest in the medical product or device is purchase of it for use by its patients; or

(2) The prescription of medical products and devices for patients by the special Government employee, or any other person specified in section 208(a).

### § 2640.204 Prohibited financial interests.

None of the exemptions set forth in §§ 2640.201, 2640.202, or 2640.203 apply to any financial interest held or acquired by an employee in violation of a statute or agency supplemental regulation issued in accordance with 5 CFR 2635.105, or that is otherwise prohibited under 5 CFR 2635.403(b).

*Example 1:* The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at $2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than $5,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

### § 2640.205 Employee responsibility.

Prior to taking official action in a matter which an employee knows would affect his financial interest or the interest of another person specified in 18 U.S.C. 208(a), an employee must determine whether one of the exemptions in §§ 2640.201, 2640.202, or 2640.203 would permit his action notwithstanding the existence of the disqualifying interest. An employee who is unsure whether a waiver is applicable in a particular case, should consult an agency ethics official prior to taking action in a particular matter.

### § 2640.206 Existing agency exemptions.

An employee who, prior to the effective date of this regulation, acted in an official capacity in a particular matter in which he had a financial interest, will be deemed to have acted in accordance with applicable regulations if he acted in reliance on an exemption issued by his employing Government agency pursuant to 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989.

## Subpart C—Individual Waivers

### § 2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(1).* Pursuant to 18 U.S.C. 208(b)(1), an agency may determine in

an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. Waivers issued pursuant to section 208(b)(1) should comply with the following requirements:

(1) The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);

(2) The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);

(3) The waiver should describe the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters;

(4) The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision;

(5) The waiver must be issued prior to the employee taking any action in the matter or matters; and

(6) The waiver may apply to both present and future financial interests, provided the interests are described with sufficient specificity.

**Note:** The disqualifying financial interest, the particular matter or matters to which the waiver applies, and the employee's role in such matters do not need to be described with any particular degree of specificity. For example, if a waiver were to apply to all matters which an employee would undertake as part of his official duties, the waiver document would not have to enumerate those duties. The information contained in the waiver, however, should provide a clear understanding of the nature and identity of the disqualifying financial interest, the matters to which the waiver will apply, and the employee's role in such matters.

(b) *Agency determination concerning substantiality of the disqualifying financial interest.* In determining whether a disqualifying financial interest is sufficiently substantial to be deemed likely to affect the integrity of the employee's services to the Government, the responsible official may consider the following factors:

(1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(2) The identity of the person whose financial interest is involved, and if the interest is not the employee's, the relationship of that person to the employee;

(3) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(4) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee;

(5) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter.

(6) Other factors which may be taken into consideration include:

(i) The sensitivity of the matter;

(ii) The need for the employee's services in the particular matter; and

(iii) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned by a reasonable person.

**§ 2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).**

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(3).* Pursuant to 18 U.S.C. 208(b)(3), an agency may determine in an individual case that the prohibition of 18 U.S.C. 208(a) should not apply to a special Government employee serving on, or an individual being considered for, appointment to an advisory committee established under the Federal Advisory Committee Act, notwithstanding the fact that the individual has one or more financial interests that would be affected by the activities of the advisory committee. The agency's determination must be based on a certification that the need for the employee's services outweighs the potential for a conflict of interest created by the financial interest involved. Waivers issued pursuant to 18 U.S.C. 208(b)(3) should comply with the following requirements:

(1) The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;

(2) The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;

(3) The waiver must include a certification that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest;

(4) The facts upon which the certification is based should be fully described in the waiver, including the nature of the financial interest, and the particular matter or matters to which the waiver applies;

(5) The waiver should describe any limitations on the individual's ability to act in the matter or matters;

(6) The waiver must be issued prior to the individual taking any action in the matter or matters; and

(7) The waiver may apply to both present and future financial interests of the individual, provided the interests are described with sufficient specificity.

(b) *Agency certification concerning need for individual's services.* In determining whether the need for an individual's services on an advisory committee outweighs the potential for a conflict of interest created by the disqualifying financial interest, the responsible official may consider the following factors:

(1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(2) The identity of the person whose financial interest is involved, and if the interest is not the individual's, the relationship of that person to the individual;

(3) The uniqueness of the individual's qualifications;

(4) The difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee;

(5) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(6) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and

(7) The extent to which the disqualifying financial interest will be affected individually or particularly by the actions of the advisory committee.

**§ 2640.303 Consultation and notification regarding waivers.**

When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in §§ 2640.301 and 2640.302. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

**§ 2640.304 Public availability of agency waivers.**

(a) *Availability.* Subject to the limitations in paragraph (b) of this section, a copy of an agency waiver issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) shall generally be made available upon request to the public by the issuing agency. Public release of waivers shall be in accordance with the procedures set forth in section 105 of the Ethics in Government Act of 1978, as amended. Those procedures are described in 5 CFR 2634.603.

(b) *Limitations on availability.* In making a waiver issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) publicly available, an agency:

(1) May withhold from public disclosure any information contained in the waiver that would be exempt from disclosure pursuant to 5 U.S.C. 552;

(2) Shall withhold from public disclosure information in a waiver issued pursuant to 18 U.S.C. 208(b)(3) concerning an individual's financial interest which is more extensive than that required to be disclosed by the individual in his financial disclosure report under the Ethics in Government Act of 1978, as amended; and

(3) Shall withhold from public disclosure information in any waiver which is otherwise subject to a prohibition on public disclosure under law.

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## Part III

# Department of Agriculture

**Agricultural Research Service Cooperative State Research, Education and Extension Service**

**Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1996; Solicitation of Applications; Notice**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service; Cooperative State Research, Education and Extension Service

### Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1996; Solicitation of Applications

**Purpose**

Applications are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program (the ''Program'') for fiscal year 1996. The authority for the Program is contained in section 1668 of Pub. L. No. 101–624 (the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5921). The Program is administered by the Cooperative State Research, education and Extension Service (CSREES) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture.

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing genetically modified plants, animals, and microorganisms into the environment. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research conducted under it. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered. Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research not appropriate to risk assessment.

**Applicant Eligibility**

Proposals may be submitted by any United States public or private research or educational institution or organization.

**Available Funding**

Subject to the availability of funds, the anticipated amount available for support of the program in fiscal year 1996 is $1.7 million.

It is expected that Congress, in the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), will prohibit CSREES from using the funds available for fiscal year 1996 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

In addition, it is expected that, pursuant to the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities will be encouraged to use such funds to purchase only American-made equipment or products.

**Program Description**

Under the Program, USDA will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and to help regulators develop policies concerning such introduction. Proposals are invited in the area of biotechnology risk assessment research as appropriate to agricultural plants, animals and microbes. Proposals based upon field research and whole organism-population level studies are strongly encouraged. Although emphasis will be given to risk assessment research involving genetically modified organisms, model systems using nongenetically modified organisms also will be considered if they can provide information that could lead to improved assessment of potential risks associated with the introduction of genetically modified organisms into the environment. Proposals should be applicable to current regulatory issues surrounding the ecological impacts of genetically modified organisms.

**Proposal Evaluation**

Proposals will be evaluated by the administrator assisted by a peer panel of scientists for scientific merit, qualifications of project personnel, adequacy of facilities, and relevance for current regulatory issues.

**Areas of Research to be Supported in Fiscal Year 1996**

Proposals addressing the following research topics are requested:

1. Development of new risk assessment methods (e.g., monitoring organism escape, measuring biological impacts), and risk assessment procedures (e.g. comparative analysis of ecosystems, models to predict risks) that could be used in risk assessment of genetically modified fungi, bacteria, viruses (including animal vaccines), plants, arthropods, fish, birds, and mammals. Applicants should address the need for, and development of, new risk assessment methods in the course of addressing a specific and defined risk assessment issue, especially as pertains to genetically modified organisms. The development of better risk assessment methods for field testing genetically modified organisms also will be considered.

2. Creation of information systems and computer models to support regulatory agency decision-making in regards to potential impacts to the environment over time (e.g., computer models to describe the interaction of environmental and organismal factors especially for establishment and dispersal of the organism).

3. Risk assessment of the environmental fate (e.g. survival, reproductive fitness, genetic stability, horizontal gene transfer) as correlated with effects (e.g., loss of genetic diversity, enhanced competition) of genetically modified fungi, bacteria, viruses, plants, arthropods, fish, birds, and mammals introduced into the environment (i.e., not in a contained laboratory, greenhouse or building); and studies or identification of traits which may influence fate and effects.

In response to requests to Program Directors and Federal regulatory agencies, as stipulated in the authorizing legislation for the Program, section 1668 of Public Law 101–624, the following specific areas of risk assessment research have been identified as eligible for competition as research topics for this year:

4. The bidirectional rates, effects of selection pressures, mechanisms and impact of gene transfer between currently genetically transformable crop species and existing North American weedy, free living relatives of those crops including studies of methods of mitigation of potential gene exchange. Research could rely on reanalysis of published information and/or laboratory/field studies.

5. The potential for recombination between plant viruses and plant-encoded noncapsid viral genes (e.g. replicase), especially for those viruses in supergroup B (carmovirus, tombusvirus, luteovirus, sobemovirus). Such studies should identify recombination potentials and, if demonstrated, define frequencies and effect on symptom expression. Comparisons with recombination frequencies between naturally occurring viral sequences are encouraged.

6. Changes in viral host ranges or the types of viral vectors as a result of the use of transgenic plants expressing viral genes.

7. The potential for nontarget effects of introduced plant-defense compounds expressed in genetically modified plant-associated microorganisms (e.g., compounds in phyllosphere or rhizosphere-inhabiting bacteria) or in

plants (e.g., *Bacillus thuringiensis* delta-endotoxin), especially in regard to persistence of the organisms and material in the environment.

8. Identification of genes which can confer additional pathogenicity to animal pathogens.

9. Environmental risk analysis of large scale deployment of genetically engineered organisms; especially commercial uses of such organisms, with special reference to consideration that may not be revealed through small scale evaluations and tests.

All research proposals submitted should include a statement describing the relevance of the proposed project to one or more of the research topics requested. When appropriate, detailed descriptions of statistical analyses to be done should be included in the proposal. The inclusion of statisticians as co-principal investigators or contractors is encouraged.

**Note:** Individual investigators whose research projects are funded under the Program will be required to attend, present data and provide a manuscript on the results of their research at an Annual Conference. Attendance costs at such a conference do not need to be included in the budgets of proposed research projects; such costs will be paid from funds provided under a cooperative agreement between CSREES and the University of Maryland for an annual risk assessment symposium Additionally, a final project report on research results will be required in a fixed protocol, electronic format, suitable for distribution by USDA.

## Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415 (58 FR 65646, December 15, 1993), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 520—ARS implementation of the National Environmental Policy Act;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSREES implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

## Programmatic Contact

For additional information on the Program, please contact:

Dr. Edward K. Kaleikau, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2241, Washington, DC 20250–2241, Telephone: (202) 401–1901

or

Dr. Robert M. Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 338, Building 005, BARC-West, Beltsville, MD 20705, Telephone: (301) 504–6918.

## How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3415), and the Application Kit contains required forms, certifications, and instructions for preparing and submitting grant applications. The administrative provisions include guidelines for proposal format.

Copies of this solicitation, the administrative provisions, and the Application Kit may be obtained by contacting:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone Number: (202) 401–5048

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number psb@reeusda.gov which states that you wish to receive a copy of the application materials for the Fiscal Year 1996 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

## Proposal Format

The format guidelines for full research proposals, found in the administrative provisions for the Program at § 3415.4(d), should be followed for the preparation of proposals under the Program in fiscal year 1996. (Note that the Department elects not to solicit preproposals nor conference grant proposals in fiscal year 1996.)

## Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 and 7 CFR part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES and ARS so that CSREES and ARS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

*(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)*

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

*(2) CSREES and ARS Categorical Exclusions (7 CFR 3407.6 and 7 CFR 520.5)*

Based on previous experience, the following categories of CSREES and ARS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES and ARS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as ''NEPA Considerations'' and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSREES and ARS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

## Proposal Submission

*What to Submit*

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

*Where and When to Submit*

Proposals must be received by 4:30 p.m. eastern standard time on December 11, 1995. Proposals sent by First Class mail must be sent to the following address:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048

Proposals that are delivered by Express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Proposal Services Branch, Awards Management Division, Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048

## Supplementary Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on this 1st day of September, 1995.

**William D. Carlson,**

*Acting Administrator, Cooperative State Research, Education, and Extension Service.*

**Robert J. Reginato,**

*Acting Administrator, Agricultural Research Service.*

[FR Doc. 95–22464 Filed 9–8–95; 8:45 am]

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federal register

Monday
September 11, 1995

# Part IV

# Postal Service

**5 CFR Ch. LX**

**39 CFR Part 447**

**Supplemental Standards of Ethical Conduct and Conforming Amendments; Final Rules**

## POSTAL SERVICE

## 5 CFR Chapter LX

**RIN 3209–AA15**

## Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The United States Postal Service, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing regulations applicable to employees of the Postal Service to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The final rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Postal Service. The final rule is effective upon publication and establishes regulations which prohibit certain outside activities and require prior approval for employees to engage in other specified outside employment or activities.

**EFFECTIVE DATE:** September 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mitchell J. Benowitz, Ethics and Information Law, Postal Service, (202) 268–2967.

**SUPPLEMENTARY INFORMATION:** On March 27, 1995, the Postal Service, with OGE's concurrence, published for comment a proposed rule to establish supplemental standards of ethical conduct for Postal Service employees (60 FR 15700–15703). The proposed rule was intended to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (5 CFR part 2635; see also the grace period extensions at 59 FR 4779–4780, February 2, 1994, and 60 FR 6390–6391, February 2, 1995). The proposed rule was issued pursuant to 5 CFR 2635.105, which authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their ethics programs. The Postal Service, with OGE's concurrence, determined that the supplemental regulations contained in the proposed rule were necessary to implement the Postal Service's ethics program successfully, considering the unique programs and operations of the Postal Service.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. No comments have been received by the Postal Service. Therefore, no changes have been made in the final rule. The Postal Service, with OGE's concurrence, is now publishing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service, to be codified at a new part 7001, Title 5 of the Code of Federal Regulations.

The Executive Branch-wide Standards have superseded many provisions of the Code of Ethical Conduct for Postal Employees (Code), 39 CFR part 447. Certain other provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 447.22(b)(1)–(7), and those provisions of 39 CFR 447.23 that involve compensated outside employment relationships, remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779–4780 and 60 FR 6390–6391. The note following 5 CFR 2635.403(a) provides that such prohibitions shall cease to be effective upon the issuance of agency supplemental regulations. Therefore, the provisions of 39 CFR part 447 concerning prohibited financial interests or compensated outside employment relationships are now superseded. In a separate document published in this issue of the **Federal Register**, the Postal Service is amending 39 CFR part 447 to repeal the financial interest prohibitions and those provisions that have been superseded by the Executive Branch-wide Standards.

### List of Subjects in 5 CFR Part 7001

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

Dated: August 2, 1995.

**Mary S. Elcano,**

*Senior Vice President, General Counsel, United States Postal Service.*

Approved: August 4, 1995.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LX, consisting of part 7001, as follows:

## CHAPTER LX—UNITED STATES POSTAL SERVICE

## PART 7001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

Sec.
7001.101 General.
7001.102 Restrictions on outside employment and business activities.
7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 401; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.802, and 2635.803.

### § 7001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635, as applied to employees of the United States Postal Service (Postal Service). Postal Service employees are subject, in addition to the standards in 5 CFR part 2635 and this part, to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to any rules of conduct issued separately by the Postal Service, including but not limited to regulations contained in 39 CFR part 447, the Postal Service's Employee and Labor Relations Manual, and the Postal Service's Procurement Manual.

### § 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities with or for a person, including oneself, engaged in:

(i) The manufacture of any uniform or other product required by the Postal Service for use by its employees or customers;

(ii) The transportation of mail under Postal Service contract to or from the postal facility at which the employee works, or to or from a postal facility within the delivery area of a post office in which the employee works;

(iii) Providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract; or

(iv) The operation of a commercial mail receiving agency registered with the Postal Service, or the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(2) Engage in any sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, or at any postal facility.

(b) *Prior approval for outside employment and business activities*—(1) *Requirement for approval.* A Postal Service employee shall obtain approval, in accordance with paragraph (b)(2) of this section, prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service; or

(ii) Engaging in outside employment or business activities, with or for a person, including oneself, whose interests are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service.

(2) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which prior approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service Ethical Conduct Officer or appropriate delegate. The request shall be accompanied by a statement from the employee's supervisor briefly summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

(i) A brief description of the employee's official duties;

(ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;

(iii) The type of employment or business activities in which the outside employer, if any, is engaged;

(iv) The type of services to be performed by the employee in connection with the outside employment or business activities;

(v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and

(vi) Any additional information requested by the Ethical Conduct Officer or delegate that is needed to determine whether approval should be granted.

(3) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activity will not involve conduct prohibited by statute or federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly traded shares of a corporation.

(2) *A person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at second-class rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons through the mails;

(iii) Engaged in a business that depends substantially upon the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Rate Commission.

(3) *A person having interests substantially dependent upon providing goods or services to or for use in connection with the Postal Service* includes a person:

(i) Providing goods or services under contract with the Postal Service that can be expected to provide revenue exceeding $100,000 over the term of the contract and that provides five percent or more of the person's gross income for the person's current fiscal year; or

(ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

**§ 7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.**

Section 440 of title 18, United States Code, makes it unlawful for any Postal Service employee to become interested in any contract for carrying the mail, or to act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 95–22381 Filed 9–8–95; 8:45 am]

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## 39 CFR Part 447

## Ethical Conduct; Conforming Amendments

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The United States Postal Service is amending the Code of Ethical Conduct for Postal Employees (Code). Many provisions of the Code have been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by the Office of Government Ethics (OGE) and by the Postal Service regulations supplemental to the Standards. Other provisions have been superseded by OGE regulations governing the filing and review of public and confidential financial disclosure reports. The superseded provisions of the Code are repealed, and certain provisions in 39 CFR part 447 are amended or revised to conform to new OGE regulations.

**EFFECTIVE DATE:** September 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mitchell J. Benowitz, Ethics and Information Law, Postal Service, (202) 268–2967.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 7, 1992, the Office of Government Ethics (OGE) published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards), now codified at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583, with additional grace-period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, which became effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

The Standards superseded most federal agency regulations promulgated under subparts A, B, and C of former 5 CFR part 735. On November 30, 1992

(57 FR 56433), the Office of Personnel Management (OPM) issued a final rule amending 5 CFR part 735. The final rule, effective February 3, 1993, repealed many provisions that were contained in subparts A, B, and C of former 5 CFR part 735, but retained certain provisions covering types of conduct that are not covered by the Standards.

On April 7, 1992, OGE published in the **Federal Register** (57 FR 11800) an interim rule amending 5 CFR parts 2633 and 2634. The interim rule implements provisions of the Ethics Reform Act of 1989 (Reform Act) and related legislation pertaining to executive branch employees, which modified public financial disclosure requirements and amended the availability of and procedures for certification of qualified blind and diversified trusts. OGE also published an interim rule, subpart I of 5 CFR part 2634, to establish, effective October 5, 1992, a revised system of confidential (nonpublic) financial disclosure reporting for certain midlevel employees of the executive branch, pursuant to the Reform Act and Executive Order 12674. These interim rules superseded Postal Service regulations pertaining to public and confidential financial disclosure reports, as contained in subpart D of 39 CFR part 447.

In a separate document published in this issue of the **Federal Register**, the Postal Service, with the concurrence of OGE, is issuing regulations applicable to employees of the Postal Service to supplement the Standards of Ethical Conduct for Employees of the Executive Branch. The supplemental regulations, to be codified at 5 CFR part 7001, include restrictions on outside employment similar to many of those that existed under the Code of Ethical Conduct for Postal Employees.

## Discussion

### I. General

The principal purpose of this rule is to repeal outdated provisions of the Code of Ethical Conduct for Postal Employees (Code), 39 CFR part 447, that have been superseded by OGE regulations. Many provisions of the Code have been superseded by the new Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. In addition, provisions of the Code that concern public and confidential financial disclosure requirements have been superseded by the interim rule amending 5 CFR parts 2633 and 2634. Certain provisions of the Code are retained, either without change or with conforming amendments, because they concern matters that are outside the scope of 5 CFR part 2635. Some provisions are amended to conform to the Ethics Reform Act of 1989, and others are amended to conform to recent changes in the organizational structure of the Postal Service.

### II. Revision of the Heading of 39 CFR Part 447

The heading of 39 CFR part 447, ''Code of Ethical Conduct for Postal Employees,'' is being revised to ''Rules of Conduct for Postal Employees.'' This revision is intended to make clear that the rules of conduct in 39 CFR part 447, as amended, are not part of the ethical standards contained in 5 CFR part 2635 and regulations supplemental thereto.

### III. Repeal of Financial Interest Prohibitions

The provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 447.22(b)(1) through (b)(7), and those provisions of 39 CFR 447.23 that involved compensated outside employment relationships, have remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779–4780 and 60 FR 6390–6391. The note following 5 CFR 2635.403(a) provides that such prohibitions shall cease to be effective upon the issuance of agency supplemental regulations. In another document, the Postal Service is now issuing supplemental regulations. Therefore, the provisions of 39 CFR part 447 concerning prohibited financial interests or compensated outside employment relationships are now superseded and repealed. The supplemental regulations prohibit certain outside employment, and they require prior approval for certain outside employment. The supplemental regulations do not, however, specify financial interests the holding of which is prohibited.

### IV. Analysis of Subparts

This amendment will affect subparts A through I of 39 CFR part 447 as follows:

*Subpart A—Basic Purpose and Applicability*

Subpart A included explanations of the applicability of 39 CFR part 447 and general standards of ethical conduct applicable to Postal Service employees. All sections of subpart A have been superseded by 5 CFR part 2635. The subpart has been revised to explain that the rules retained in 39 CFR part 447 are in addition to other rules of conduct, specifically the rules contained in 5 CFR part 2635 and Postal Service regulations supplemental thereto.

*Subpart B—Standards of Conduct*

Subpart B contained general standards of conduct, rules concerning prohibited financial interests, rules concerning outside employment, and other rules of conduct applicable to Postal Service employees. Most sections of subpart B are repealed because they have been superseded by 5 CFR part 2635 and the Postal Service regulations supplemental thereto, but certain sections are retained. In order to distinguish the rules in subpart B of 39 CFR part 447 from the ''standards'' in 5 CFR part 2635, the heading of subpart B is revised to ''Employee Conduct.''

The following sections of subpart B are retained:

(1) Part of paragraph (j) of 39 CFR 447.23, which concerned teaching, lecturing, and writing. Because the subject of teaching, lecturing, and writing is generally covered in 5 CFR part 2635, part of paragraph (j) therefore is superseded and repealed. Paragraph (j) also included, however, rules concerning the use of information in connection with preparing persons for examinations for appointments within the Federal Government. This part of paragraph (j) is similar to the Executive Branch-wide rule promulgated by OPM, 5 CFR 735.202. The OPM rule does not, however, apply to examinations for appointment in the Postal Service, and it does not specify that the Postmaster General may authorize the use of nonpublic information when such use is in the public interest. Therefore, part of paragraph (j) is retained in amended form.

(2) Paragraph (k) of 39 CFR 447.23, which prohibited employees from using sick leave to enable themselves to engage in outside employment. This paragraph is retained because it is an internal personnel rule, issued pursuant to authority independent of 5 CFR part 2635.

(3) Paragraphs (a), (c), (d), (e), and (f) of 39 CFR 447.25. These paragraphs concerned, respectively, discrimination, conduct prejudicial to the Postal Service, use of intoxicating beverages, illegal use of drugs, and gambling. The paragraphs are retained because they cover types of conduct that are not within the scope of 5 CFR part 2635, and they are issued pursuant to authority independent of that part.

*Subpart C—Ethical Conduct Advisory Services and Remedial Action*

Subpart C included procedures by which Postal Service employees may

obtain advice concerning standards of ethical conduct, rules concerning remedial action based on violations of ethical standards, and regulations concerning post-employment restrictions imposed under 18 U.S.C. 207.

Sections concerning advisory services are retained in amended form. Under 5 CFR 2635.107, agencies are responsible for providing counseling to their employees with regard to the application of 5 CFR part 2635 and regulations supplemental thereto. The retained sections pertain solely to the Postal Service's internal implementation of requirements imposed by OGE regulations, and they are amended to conform to the OGE regulations and recent changes in the organizational structure of the Postal Service.

Sections concerning remedial action are superseded and repealed because 5 CFR 2635.106 provides that violations of 5 CFR part 2635 or regulations supplemental thereto may be cause for disciplinary or corrective action. Nevertheless, as specified in revised subpart A of 39 CFR part 447, Postal Service employees who violate the rules in amended 39 CFR part 447 may be subject to disciplinary action.

The sections that pertained to post-employment restrictions, 39 CFR 447.33 and 447.34, are amended to conform to the Ethics Reform Act of 1989. The Reform Act includes amendments to 18 U.S.C. 207, which became effective on January 1, 1991. Sections 447.33 and 447.34 of 39 CFR part 447 were based on former 18 U.S.C. 207, and they applied only to persons who terminated their employment with the Postal Service prior to January 1, 1991. Section 447.33, which described the restrictions imposed under 18 U.S.C. 207 as in effect prior to January 1, 1991, is revised to refer to OGE regulations concerning the same subject, 5 CFR part 2637. Section 447.34, which implemented administrative enforcement procedures authorized under 18 U.S.C. 207(j) as in effect prior to January 1, 1991, is repealed. A new section is added to notify employees who leave the Postal Service after January 1, 1991, that they are subject to the restrictions imposed under 18 U.S.C. 207, as amended.

*Subpart D—Reports of Employment and Financial Interests*

Subpart D included regulations concerning the filing and review of confidential and public financial disclosure reports. These regulations are superseded by the new OGE regulations in 5 CFR part 2634.

*Subpart E—Political Activities*

Subpart E contained regulations concerning the political activities of Postal Service employees. The regulations are retained because they are issued pursuant to authority independent of 5 CFR part 2635. Section 447.53 is amended to correct a citation to regulations issued by OPM.

*Subpart F—Participation in Community Affairs*

Subpart F contained regulations concerning the holding of state or local office by Postal Service employees. The regulations are retained because they are issued pursuant to authority independent of 5 CFR part 2635. Section 447.62 is amended to conform to changes in the organizational structure of the Postal Service.

*Subpart G—Bribery, Undue Influence, or Coercion*

Subpart G contained regulations concerning internal procedures for reporting instances in which persons attempt to bribe, unduly influence, or coerce Postal Service employees, and instances involving potential violations of federal laws related to the responsibilities of the Postal Service. The regulations are retained because they are issued pursuant to authority independent of 5 CFR part 2635.

*Subpart H—Definitions*

The sections in subpart H defined terms used in 39 CFR part 447. All sections are superseded by 5 CFR part 2635 and are repealed. The definitions of ''Postal Service'' and ''employee'' are moved to subpart A of 39 CFR part 447. ''Employee'' is defined to include a special employee as defined by 18 U.S.C. 202(a). This definition is consistent with the definition of ''employee'' in 5 CFR 2635.102(h).

*Subpart I—Statutory Provisions*

The sections in subpart I, which listed statutes applicable to Postal Service employees, are repealed. Many of the listed statutes apply to all federal employees and are listed in 5 CFR 2635.902. Although statutes that apply specifically to Postal Service employees are not listed in 5 CFR part 2635, the repeal of this subpart does not excuse employees from complying with any applicable statutes. The sections in this subpart are repealed because they are at least in part superseded by 5 CFR part 2635, the statutes are listed for informational purposes only, and the removal of ethical conduct regulations from 39 CFR part 447 renders that part a less useful location for such information.

Following this amendment, 39 CFR part 447 will be reorganized as follows:

**PART 447—RULES OF CONDUCT FOR POSTAL EMPLOYEES**

**Subpart A—Applicability and Definitions**

Sec.
447.11 Applicability.
447.12 Definitions.

**Subpart B—Employee Conduct**

447.21 Prohibited conduct.

**Subpart C—Ethical Conduct Advisory Services and Post-Employment Activities**

447.31 Advisory service.
447.32 Post-employment activities.

**Subpart D—Political Activities**

447.41 General.
447.42 Additional prohibited political activities.
447.43 Investigation and enforcement.

**Subpart E—Participation in Community Affairs**

447.51 General.
447.52 Holding of State or local office by Postal Service employees.

**Subpart F—Bribery, Undue Influence, or Coercion**

447.61 General.

**List of Subjects in 39 CFR Part 447**

Conflict of interests, Political activities.

For the reasons set forth above, 39 CFR part 447 is amended as follows:

## PART 447—RULES OF CONDUCT FOR POSTAL EMPLOYEES

1. The authority citation for part 447 is revised to read as follows:

**Authority:** 39 U.S.C. 401.

2. The heading of part 447 is revised as set forth above.

3. Subpart A, consisting of §§ 447.11 and 447.12, is revised to read as follows:

### Subpart A—Applicability and Definitions

**§ 447.11 Applicability.**

This part contains rules of conduct for the employees of the Postal Service. Employees are required to comply with the regulations in this part, and violations of the regulations may be cause for disciplinary action. The regulations in this part are in addition to other rules of conduct provided by applicable statutes, regulations, or Postal Service handbooks and manuals. For applicable rules of ethical conduct, employees are referred to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

**§ 447.12 Definitions.**

The following definitions apply for purposes of this part.

(a) *Postal Service.* The United States Postal Service as established by 39 U.S.C. 201.

(b) *Employee.* An individual appointed to a position, temporary or permanent, within the Postal Service, or hired as an executive under an employment contract, including a substitute or a special employee as defined by 18 U.S.C. 202(a). The term ''employee'' does not include the Governors of the Postal Service.

4. The heading of subpart B is revised to read as follows:

## Subpart B—Employee Conduct

**§ 447.21 [Removed]**

5. Section 447.21 is removed.

**§ 447.22 [Removed]**

6. Section 447.22 is removed.

7. Section 447.23 is redesignated as § 447.21 and is amended by removing the introductory text and paragraphs (a) through (i). Paragraphs (j) and (k) are redesignated as §§ 447.21(a) and 447.21(b). Newly redesignated § 447.21 is amended by revising the heading and paragraph (a) to read as follows:

**§ 447.21 Prohibited conduct.**

(a) An employee must not engage, either on a paid or unpaid basis, in teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, or for appointment in the U.S. Postal Service, when these activities are dependent on information obtained as a result of his or her employment with the Postal Service, except when that information has been made available to the general public, or will be made available on request, or when the Postmaster General gives written authorization that the use of nonpublic information is in the public interest.

* * * * *

**§ 447.24 [Removed]**

8. Section 447.24 is removed.

**§ 447.25 [Amended]**

9. Section 447.25 is amended by removing paragraph (b). Paragraph (a) is redesignated as § 447.21(c). Paragraphs (c) through (f) are redesignated as §§ 447.21(d) through 447.21(g).

**§ 447.26 [Removed]**

10. Section 447.26 is removed.

**§ 447.27 [Removed]**

11. Section 447.27 is removed.

12. The heading of subpart C is revised to read as follows:

## Subpart C—Ethical Conduct Advisory Services and Post-Employment Activities

13. Section 447.31 is revised to read as follows:

**§ 447.31 Advisory service.**

(a) The Ethical Conduct Officer is responsible for the administration of the ethics program of the Postal Service. In the exercise of that responsibility, the Ethical Conduct Officer shall coordinate the advisory service provided by this section, assure that authoritative interpretations of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and Supplemental Postal Service Regulations (Supplemental Regulations) are available to the Associate Ethical Conduct Officers, and render final rulings on behalf of the Postal Service in appeals by employees from rulings under the Standards and Supplemental Regulations made by an agency designee. The Ethical Conduct Officer shall provide advice and guidance for the Postmaster General and all Associate Ethical Conduct Officers concerning questions arising under the Standards and Supplemental Regulations. The Ethical Conduct Officer may delegate to an Assistant Ethical Conduct Officer authority to perform any duty or function vested in him or her by this Section. The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) The Deputy Postmaster General is the Associate Ethical Conduct Officer for the Office of the Postmaster General and the Office of the Deputy Postmaster General. The Chief Operating Officer, Senior Vice Presidents, Vice Presidents, and such other persons as the Ethical Conduct Officer may designate are Associate Ethical Conduct Officers for their respective organizational elements. Each Associate Ethical Conduct Officer shall designate a suitable employee to coordinate the ethics program within his or her organization and to act as liaison with the Ethical Conduct Officer. Each Associate may designate other suitable employees to assist or act for him or her and shall ensure that there is an adequate number of Qualified Ethics Trainers to comply with the requirements of the annual ethics training program.

(c) The Ethical Conduct Officer and, with his or her approval, Associate Ethical Conduct Officers, may delegate to additional persons or classes of persons the authority to make determinations, to give approval, or to take other action in accordance with the Standards of Ethical Conduct, as is contemplated by 5 CFR 2635.102(b), defining ''agency designee.''

(d) An employee may obtain advice and guidance on questions of conflicts of interest from the Ethical Conduct Officer or the Associate Ethical Conduct Officer having appropriate jurisdiction. In order to avoid undue interference with established grievance and disciplinary procedures, advisory service under this subpart will not normally be available in an instance in which a grievance is pending or disciplinary action has been initiated.

(e) An employee may request any ruling provided for by the Standards and Supplemental Regulations by submitting a request in writing to the Senior Counsel, Ethics, or, in the field, to the Chief Field Counsel or Deputy Chief Field Counsel, General Law.

(f) An employee may appeal to the Ethical Conduct Officer from a ruling made by an agency designee concerning matters covered by the Standards and Supplemental Regulations within 30 days from the date of the ruling. The appeal must be in writing and must contain a full statement of the relevant facts. It should be addressed to the Ethical Conduct Officer, U.S. Postal Service, Washington, DC 20260, and a copy thereof should be sent to the official whose ruling is being appealed.

**§ 447.32 [Removed]**

14. Section 447.32 is removed.

15. Section 447.33 is redesignated as § 447.32 and revised to read as follows:

**§ 447.32 Post-employment activities.**

(a) Restrictions on the post-employment activities of persons who have been employed by the Postal Service are imposed by 18 U.S.C. 207. The Ethics Reform Act of 1989 includes amendments to 18 U.S.C. 207, which became effective January 1, 1991. Employees who terminated their employment prior to January 1, 1991, are subject to the restrictions imposed under 18 U.S.C. 207 in effect prior to that date, while all other employees are subject to the restrictions imposed under 18 U.S.C. 207 as amended.

(b) The Office of Government Ethics has issued regulations, contained in 5 CFR part 2637, that implement 18 U.S.C. 207 as in effect prior to January 1, 1991. Employees who terminated their employment with the Postal

Service prior to January 1, 1991, may refer to 5 CFR part 2637 for guidance concerning applicable post-employment restrictions, and further guidance may be obtained in accordance with § 447.31 of this part.

(c) Employees who terminate their postal employment on or after January 1, 1991, are subject to 18 U.S.C. 207 as amended. Guidance concerning post-employment restrictions applicable to such employees may be obtained in accordance with § 447.31 of this part.

**§ 447.34 [Removed]**

16. Section 447.34 is removed.

**§ 447.41 [Removed]**

17. Section 447.41 is removed.

**§ 447.42 [Removed]**

18. Section 447.42 is removed.

19. Redesignate subpart E as subpart D as follows:

## Subpart D—Political Activities

**§§ 447.51 and 447.52 [Redesignated as §§ 447.41 and 447.42]**

20. Sections 447.51 and 447.52 are redesignated as §§ 447.41 and 447.42.

21. Section 447.53 is redesignated as § 447.43 and revised to read as follows:

**§ 447.43 Investigation and enforcement.**

The Office of the Special Counsel and the Merit Systems Protection Board investigate and adjudicate allegations of political activity in violation of the regulations of the Office of Personnel Management by Postal Service employees. For jurisdiction in such a case, see 5 CFR 734.102 and part 1201.

22. Redesignate subpart F as subpart E as follows:

## Subpart E—Participation in Community Affairs

**§ 447.61 [Redesignated as § 447.51]**

23. Section 447.61 is redesignated as § 447.51.

24. Section 447.62 is redesignated as § 447.52, and paragraph (d)(2) is revised to read as follows:

**§ 447.52 Holding of State or local office by Postal Service employees.**

* * * * *

(d) * * *

(2) The Vice President, Area Operations, determines that the employee's postal responsibilities are being conducted in a satisfactory manner and that the absence of the employee during the campaign period will not disrupt the operation of the facility where he or she is employed.

**Note:** Requests shall be submitted through the postmaster or other installation head to the Vice President, Area Operations. If the employee is elected to and takes such a full-time office, he or she may either be separated from the Postal Service or granted leave without pay.

* * * * *

## Subpart F—Bribery, Undue Influence, or Coercion

**§ 447.71 (Subpart G) [Redesignated as § 447.61 (Subpart F)]**

25. Redesignate subpart G, consisting of § 447.71, as subpart F, consisting of redesignated § 447.61.

**§ 447.81 [Removed]**

26. Subpart H, consisting of § 447.81, is removed.

**§ 447.91 [Removed]**

27. Subpart I, consisting of § 447.91, is removed.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 95–22380 Filed 9–8–95; 8:45 am]

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## Part V

# Environmental Protection Agency

**Guidance on Identification of Lead-Based Paint Hazards; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–62150; FRL–4969–6]**

## Guidance on Identification of Lead-Based Paint Hazards

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

**ACTION:** Notice.

**SUMMARY:** Section 403 of Title IV of the Toxic Substances Control Act (TSCA), requires EPA to promulgate regulations that ''identify. . .lead-based paint hazards, lead-contaminated dust and lead-contaminated soil.'' While EPA is in the process of developing section 403 rules, it has issued information designed to serve as guidance until the promulgation of those rules. This guidance was originally issued in a July 14, 1994 memorandum from Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances, entitled ''Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil.'' Subsequently, copies of the guidance have been available from the Agency upon request. In order to further disseminate the guidance, the Agency is publishing the full text of that document in this notice.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact David Topping, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–7737, e-mail: topping.david@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102–550, contains 16 titles amending and extending a number of laws relating to housing and community development. Title X of the HCDA titled ''The Residential Lead-Based Paint Hazard Reduction Act of 1992'' contains five subtitles extending and establishing programs for reducing exposure to lead, principally in paint. Subtitle B of Title X amends the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, et. seq., by adding Title IV, which requires EPA to take certain actions to address lead-based paint concerns, including establishing requirements for training and accreditation of contractors conducting lead paint-related work.

Section 403 of TSCA requires EPA to promulgate regulations that ''identify . . . lead-based paint hazards, lead-contaminated dust and lead-contaminated soil'' for purposes of Title IV of TSCA and the entire Title X of the HCDA. The Agency is continuing to develop this rule and expects to promulgate final section 403 rules by October of 1997.

Recognizing that the section 403 rulemaking process is technically complicated and would be protracted, the Agency issued information on lead-based paint hazards on July 14, 1994, in response to an increasing number of requests for guidance from State and EPA Regional offices, as well as public health and housing officials. The information (the ''Guidance'') was issued in the form of a memorandum from Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances, to EPA Regional Toxics Program Division Directors. The Guidance was made available to the public through various means, including the National Lead Information Center Clearinghouse and EPA's RCRA/Superfund Hotline. In response to concerns that additional steps should be taken to ensure that the Guidance is readily available to the general public, the Agency is publishing the full text of the Guidance in today's notice.

### II. Appropriate Use of the Guidance

The Agency notes that these recommendations were designed to serve solely as guidance for purposes of Title IV of TSCA and, as such, do not have the effect of regulation. Additionally, the Guidance reflects risk management decisions based upon consideration of the information available to the Agency at the time that it was issued. As more complete information becomes available to the Agency, it will be considered in the section 403 rulemaking. Other caveats related to the Agency's intentions and the appropriate use of the Guidance are contained in the sections entitled ''Use of This Guidance'' and ''Relationship of Soil Levels in This Guidance to the OSWER Interim Soil Lead Directive'' in the Guidance text. For example, these sections explain that the Guidance does not apply to RCRA Corrective Action and Superfund sites.

### III. Updated Citations

The Guidance contains a now outdated reference to draft EPA sampling procedures, referenced as ''Residential Sampling for Lead: Protocols for Sampling Lead in Dust and Soil (EPA, 1994).'' Since the release of the Guidance, these procedures have become available in the final version, as Residential Sampling for Lead: Protocols for Dust and Soil Sampling, EPA 747-R-95-001 (March 1995). Copies of this document can be obtained from the National Lead Information Center Clearinghouse at 1-800-424-LEAD.

### IV. Text of the Guidance

*Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil*

July 14, 1994.

Recently EPA has received an increasing number of requests for advice on residential lead-based paint hazards, including hazards from lead-contaminated dust and soil in and around homes. These requests have come from State and EPA Regional officials, as well as from public health and housing personnel, concerned with childhood lead poisoning. While the Agency is in the process of developing a rule to identify these hazards under section 403 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2683, we believe it is appropriate to respond to these requests by issuing guidance at this time based upon our best currently available information.

EPA believes that it would not be prudent to issue national regulatory standards under section 403 at this time since a number of relevant research activities are currently underway and are scheduled to be completed in the near future. It is expected that this research will allow the Agency to develop standards that would more accurately direct resources toward residences that would benefit most from abatement and control activities. In the interim, the recommendations in this document represent the Agency's best judgement given its current state of knowledge and experience and are intended to serve as guidance until the promulgation of the TSCA section 403 rule. EPA emphasizes that these recommendations are intended solely as guidance and, as such, are not intended, nor can they be relied upon, to create any obligation or right that may be created in the future by rules issued under TSCA section 403. Persons to whom this guidance is directed may decide to follow it or to act at variance with it and may use the guidance in conjunction with analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

### Use of This Guidance

It is the Agency's intent that this guidance be used to prioritize primary prevention activities that address hazards from lead in and around residences. EPA expects that these

hazards will be among those that will be identified when regulations are issued under TSCA section 403. The levels and conditions described in this guidance should be used by decisionmakers (risk assessors, risk managers, etc.) to identify lead-based paint hazards, sources of lead exposure, and the need for control actions in residential environments where children may be present. They should not be regarded as definitive statements of the lead hazard associated with specific environmental lead measurements, but the Agency believes that the criteria provided herein can inform and guide decisions on the identification of lead-based paint hazards and appropriate responses. Also, any lead-based paint-related activities (including lead detection, abatement, clearance, and disposal) should comply with all Federal, State, and local regulations.

Additionally, it should not be inferred that the recommendations in this guidance will, in and of themselves, guarantee the elimination of risks to children from residential lead exposure. Rather, this guidance is an attempt to identify the general types of environmental conditions and response activities that, given the current state of our knowledge, are likely to reduce risks over various broad ranges of environmental lead levels that may be found in the residential environment.

Finally, this guidance is not to be applied in addressing potential threats from lead at CERCLA and RCRA Corrective Action sites. Guidance developed by the Office of Solid Waste and Emergency Response is the appropriate tool for addressing these types of sites.

## General

Although considerable progress has been made in the reduction of environmental lead (e.g., the phase-out of leaded gasoline and lead-soldered food cans, more stringent drinking-water standards, etc.), residual lead contamination remains ubiquitous in both residential and commercial areas. In this guidance, the Agency's approach is to focus on the sources of lead that are related to the nation's housing stock. While there are numerous pathways for lead exposure, eliminating or reducing the role of lead-based paint and lead-contaminated soil as direct exposure sources (and as contributors to indoor lead dust) will significantly reduce total lead exposures from residential sources.

Soil and dust at other locations (e.g., day care centers, public playgrounds, and other non-residential areas) can also be important contributors to a child's lead exposure. While these areas are outside the scope of TSCA section 403 authority, their potential contribution to a child's total lead exposure should also be considered when deciding upon community-wide responses to environmental lead.

In addition, the Agency recognizes that a number of factors contribute to risks from lead, including the nature of the lead sources, the amount of exposure to each source, and others. In this guidance, the Agency is using the levels of lead (and, for soil, the expected extent of children's contact) as a surrogate for risk.

At low to moderate levels of lead in soil and dust, and where paint deterioration is not extensive nor substrate failures or moisture problems present, EPA believes that interim controls can be an effective way to temporarily reduce exposures.[1] Interim control of lead in dust, soil, or painted surfaces must be predicated upon demonstrated ability to maintain and monitor such management strategies, based upon condition of the environment, expected use and contact, and reasonably anticipated changes in condition and/or use. At higher lead levels in soil and dust, and under deteriorated conditions of lead-based painted surfaces, more rigorous and long-term exposure reduction interventions should be taken. Under certain conditions related to extremely high soil concentrations or structural damage to painted surfaces, interim controls may not be appropriate for particular areas or components and only complete abatement of the component by an adequately trained professional will ensure adequate protection.

EPA policymakers do not believe that they are in a position to identify these levels and conditions as regulatory standards at this time. However, the Agency has developed this guidance based on consideration of estimated health impacts from lead exposure, the need to prioritize residences that would benefit from abatement, and comparison of risk reduction benefits and cost allocation projected for various control measures.

## Sequence of Source Control Activities

Because of the interrelationship between lead-based paint, lead-contaminated dust, and lead-contaminated soil (e.g., lead in paint can contribute lead to dust and soil, lead in soil can contribute lead to interior dust, etc.), it is important that the sources of lead be considered in proper order when conducting response activities. For example, if soil is being contaminated by deteriorating exterior lead-based paint, it is preferable to address the paint first, immediately followed by the soil. If the soil were addressed first, it may become recontaminated during work on the paint. In general, exterior paint should be addressed prior to soil, while soil and interior paint should be addressed prior to interior dust. This best avoids potential recontamination problems among the three. Exceptions should be made when there will be delays in addressing a source or when levels in one medium (such as interior dust) are clearly hazardous and immediate actions are needed to protect health. If, in the previous example, the exterior paint could not be addressed immediately for some reason, it would not be appropriate to delay attention to the soil, since the soil could continue to act as a source of exposure.

## Lead-Based Paint

Lead-based paint is of concern both as a source of direct exposure through ingestion of paint chips, and as a contributor to lead in interior dust and exterior soil. Lead was widely used as a major ingredient in most interior and exterior oil-based paints prior to 1950. Lead compounds continued to be used as corrosion inhibitors, pigments, and drying agents from the early 1950's. In 1972, the Consumer Products Safety Commission limited lead content in new residential paint to 0.5% (5,000 ppm) and, in 1978, to 0.06% (600 ppm).

The Department of Housing and Urban Development (HUD) estimates that three-quarters of pre-1980 housing contain some lead-based paint. The occurrence, extent and concentration of lead-based paint increase with the age of the housing. Ninety percent of privately-owned housing units built before 1940 contain some lead-based paint; 80% of 1940-1959 units; and 62% of 1960-1979 units.[2]

Coatings of residential paint are defined by statute to be lead-based if the lead content exceeds either 1.0 $mg/cm^2$ or 0.5% by weight. Lead-based paint should be either abated or addressed through interim controls if it is found in any of the following circumstances: (1) it is deteriorated (in any location); (2) it is present (in any condition) on impact or friction surfaces; or (3) it is present

[1] ''Interim controls'' means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, such as paint repair, specialized cleaning, temporary containment and ongoing monitoring of lead-based paint hazards or potential hazards.

[2] Comprehensible and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing: A Report to Congress, U.S. Department of Housing and Urban Development, Washington, DC, December 7, 1990.

(in any condition) on surfaces that are accessible for mouthing or chewing by children. ''Deteriorated paint'' means any interior or exterior paint that is peeling, chipping, chalking, or cracking, or is located on an interior or exterior surface or fixture that is damaged or deteriorated. An ''impact surface'' is an interior or exterior surface that is subject to damage from repeated impacts (e.g., certain parts of door frames). A ''friction surface'' is an interior or exterior surface that is subject to abrasion or friction (e.g., certain window, floor, and stair surfaces). A surface is considered to be accessible for mouthing or chewing by children if it protrudes from the surrounding area to the extent that a child can chew the surface, and is within three feet of the floor or ground (e.g., window sills, railings, and the edges of stair treads). (Recommendations for sampling of painted surfaces are attached.)

When it is determined that paint abatement and/or interim control activities will be performed on housing components, they should be performed according to practices that will be described in the 1995 HUD Guidelines and the regulations to be promulgated under section 402 of TSCA, 15 USC 2682 (as appropriate for the unit in question), including clearance testing.[3,4] The section 402 standards are expected to be proposed in several months. (Guidance on sampling and analysis of dust for clearance testing is attached.) Until either the HUD Guidelines are published in final form or the section 402 standards are issued, abatement activities should be performed according to the current HUD guidelines and interim control activities should be conducted according to state and local requirements, since they are not addressed in the existing HUD guidelines.

**Lead-Contaminated Dust**

In many cases, lead-contaminated interior dust can be the most direct source of a child's lead exposure, acting as a pathway for lead from lead-based paint, exterior soil, dust carried home from occupational exposure, etc. This guidance primarily confronts this source by addressing the residence-related sources of lead in dust--namely, lead-based paint and soil. The effect of the recommendations for paint and soil is removal or control of these two sources, followed by cleanup of the previously contaminated dust. In the context of their lead abatement programs, HUD has established ''clearance levels,'' which are part of the evaluation of the thoroughness of abatement and subsequent cleanup activities. Clearance levels are ''technology based''--that is, they indicate what can be achieved after proper abatement or interim control actions. Clearance levels are appropriate since the marginal cost of attaining them is typically quite low once an intervention is underway, and EPA and HUD experience indicates that they can be achieved through proper abatement and interim control activities. The Agency therefore recommends that the following clearance levels be met after abatement or interim control activities have been performed:

| Location | Lead loading |
|---|---|
| Uncarpeted floors[5] | 100 μg/ft$^2$ (0.93 mg/m$^2$) |
| Interior window sills | 500 μg/ft$^2$ (4.65 mg/m$^2$) |
| Window wells | 800 μg/ft$^2$ (7.45 mg/m$^2$) |

[5] It is anticipated that the 1995 revision to the HUD guidelines will lower the current clearance standard of 200 μg/ft$^2$ for uncarpeted floors to 100 μg/ft$^2$.

Section 403 directs the Agency to issue rules that identify lead-based paint hazards, which include lead-contaminated dust that would result in adverse health effects. The levels that will be developed in the section 403 rulemaking will indicate to risk assessors that a lead-based paint hazard (for dust) exists. Obviously, the levels will be different in purpose than clearance levels--the former indicating that a hazard is present and the latter indicating that source control and cleanup have been appropriately performed. Accordingly, hazard levels are to be used during risk assessment and re-evaluation, whereas clearance levels are used to confirm the success of abatement and/or interim control activities.

Until the standards can be developed under section 403, the above-listed clearance levels should be used in identifying lead-based paint hazards and sources of lead exposure, and determining the need for control actions. The Agency reiterates that these recommendations are based upon lead levels that have been demonstrated to be achievable through abatement and interim control activities and they are not based upon projected health effects associated with specific dust lead levels. As a result of continued Agency evaluation of the relationship between interior dust lead levels and health effects, these hazard levels may be revised in future guidance.[6] Also, when assessing multiple sources of lead, dust lead concentration may be a more appropriate measurement. The utility of concentration measurements for identifying section 403 hazards from dust will be further considered in the development of the section 403 rulemaking.

Other potential sources of lead that may be present in house dust in addition to lead-based paint and lead-contaminated soil include neighborhood sources, such as demolition of a nearby building, sandblasting of a bridge, or other activities involving structures that may contain lead-based paint. Also, lead may be brought into the home on clothing of residents employed in lead-related occupations, or as the result of some hobbies. Additionally, deteriorated paint which contains some lead, but at levels lower than 1.0 mg/cm$^2$ or 0.5% by weight, could be a source. Depending upon the extent to which these sources contribute lead to interior dust, regular cleaning of the residence may not provide sufficient reduction in the level of lead exposure from dust, and the sources should be identified and controlled. It is often possible to identify these situations through sampling and analysis of the interior dust.

Since lead levels measured by wipe samples (''dust lead loading'') are dependent upon both the amount of collectable dust on a surface and the concentration of lead in that dust, high values for either of these two factors

[3] ''Abatement'' means any set of measures designed to permanently eliminate lead-based paint hazards, including the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or permanent covering of lead-contaminated soil.

[4] HUD is developing detailed technical guidelines pursuant to section 1017 of Title X of the Housing and Community Development Act of 1992 to describe best practices for all activities related to the evaluation and control of lead-based paint hazards. While applicable specifically to federally-assisted housing, the described practices provide useful technical guidance for all types of housing with similar conditions. These Guidelines are now undergoing clearance and approval within HUD and are available in draft form for review. These Guidelines will supersede HUD's 1990 ''Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing,'' which focused primarily on testing and abatement (and do not address risk assessment or interim controls).

[6] Principal among the studies expected to provide further information on the relationship between dust lead and children's blood lead levels is the recent Rochester Lead-in-Dust study. This HUD-funded study was conducted by the University of Rochester from May to December of 1993 and included approximately 200 children whose primary source of lead exposure was from house dust. Peer review of this study began in June of 1994.

could produce high wipe sample lead results. That is, a large amount of low-lead-concentration dust and a small amount of high-lead-concentration dust could result in similar wipe sample results. Therefore, while low dust lead loading values may indicate that sources that contribute to household dust have been sufficiently controlled, high values could result from any of the following situations: (1) there are some insufficiently controlled sources that continue to contribute significant amounts of lead to the dust; (2) relatively large amounts of low-lead dust are present; or (3) some combination of these occurs.

Dust lead concentration measurements can provide insight as to which of these conditions is resulting in high wipe sample values, as well as assist risk assessors in identifying possible sources. For example, if interior paint has been ruled out as a source, and dust concentrations approach those of exterior soil, it may well be the result of soil being tracked into the house from outside. Also, if paint is in sound condition and soil concentrations are low but the interior dust concentrations are high, it is possible that other sources, such as dust carried home from lead-related work, are present. Through a systematic process of elimination, many of the sources of lead in house dust can often be determined. While a detailed discussion on how to perform these types of assessments is outside the scope of this guidance, these issues will be addressed by certification procedures and training requirements for parties involved in lead-based-paint activities (which includes abatement, inspection and risk assessment) currently being developed under section 402 of TSCA.

To ensure that excessive exposures are not being caused by the amount of dust in the house, the Agency recommends that efforts always be made to minimize dust in residences, even after paint and dust sources have been addressed through any needed interim control and/or abatement activities. A key component of these efforts is the need to maintain a residence in a cleanable state (i.e., in such a condition that it can be effectively cleaned by the occupant using reasonable cleaning procedures). For example, water-damaged or worn wood flooring may have a rough surface with crevices from which dust cannot be readily removed through routine wet mopping. Such surfaces should either be replaced or repaired so that they are cleanable. Likewise, it is important that the residence be effectively and regularly cleaned and that exposures to any interior dust be minimized. Recommended activities to reduce interior dust lead levels and associated exposures include: mopping floors, window ledges, and accessible surfaces with a warm detergent solution; washing pacifiers and bottles if they fall on the floor; washing toys and stuffed animals regularly; and ensuring that children wash their hands before meals, naps, and bedtime. These activities, as well as the importance of nutrition and other factors relevant to children's risk from lead exposure, should always be stressed as part of public education and awareness programs, regardless of the measured lead concentration in any one medium.

**Lead-Contaminated Soil**

Lead-contaminated exterior bare soil is of concern both as a direct source of exposure through inadvertent ingestion due to children's normal hand-to-mouth activity, and as a contributor to indoor dust lead levels (e.g., when tracked into a residence from outside).

Common sources of lead in residential soil include deteriorating exterior lead-based paint and historical airborne deposition onto the soil surface as the result of point source emissions or leaded gasoline. These sources have added substantially to the naturally occurring lead in soils, which generally range from 5 - 50 parts per million.[7] Also, industrial sources such as smelters, recycling facilities, and mining activities can result in lead contamination at residential areas. This adds difficulty in relating lead levels in soil to potential health effects because lead from different sources may pose different levels of potential hazard. One apparent difference is the extent to which ingested lead originating from different sources is taken up into the body--that is, the bioavailability of the lead. Decisionmakers should consider this and any other available information when implementing the recommendations contained in this guidance, particularly where non-paint sources of lead are involved. That is, if the soil is contaminated by lead from other sources, rather than lead-based paint, decisionmakers should investigate the types of lead compounds present and their unique characteristics. Agency guidance on consideration of bioavailability of lead in risk assessment can be found in the Guidance Manual for the Integrated Exposure Uptake Biokinetic Model for Lead in Children (available from National Technical Information Service, U.S. Dept. of Commerce, Attn: Sales, Springfield, VA 22169 (703/487-4650), as document number PB 93-963510).

Soil lead concentrations in the United States vary widely, from less than one to tens of thousands of parts per million (ppm). This range of concentrations and attendant potential exposure levels indicates that it is appropriate to develop a scaled strategy of risk reduction activities, depending upon the concentrations at particular locations and other site-specific factors. The Agency's recommendations for response activities at varying soil lead concentrations are as follows.

The Agency is recommending that (depending upon use patterns, populations at risk, and other factors), when lead concentrations are observed that exceed 400 ppm in bare soil, further evaluation should be undertaken and physical exposure-reduction activities, commensurate with the expected degree of risk, are appropriate.[8] The Agency

[7] U.S. Environmental Protection Agency (1989) Review of the National Ambient Air Quality Standards for Lead: Exposure Analysis Methodology and Validation. U.S. EPA Office of Air Quality Planning and Standards, RTP, NC. EPA-450/2-89/011.

[8] The selection of 400 ppm in this guidance is based upon two decisions. The first is that the level should help in reducing the threat that environmental lead poses to the public. In this guidance, EPA estimates that beginning exposure reduction activity at 400 ppm will help ensure that a typical child or group of children exposed to lead would have an estimated risk of no more than 5% of exceeding a blood lead level of 10 µg/dl. This benchmark may change in the future section 403 rulemaking.

The second decision is to use the best available tool for assessing the relationship between children's blood lead levels and environmental lead levels. Current research indicates that young children are particularly sensitive to the effects of lead and require specific attention in the development of lead standards. A level that is protective for young children is expected to be protective for older population subgroups. In the same environmental setting, pregnant women would be expected to have blood lead levels lower than would young children, and this may further limit fetal exposures.

The Agency has examined both epidemiological studies and modeling approaches for this purpose. Both of these will be further evaluated as part of the effort to develop section 403 rulemaking. However, given the need to issue guidance at this time, the Agency is choosing to base the guidance on the Integrated Exposure Uptake Biokinetic (IEUBK) model, which EPA designed to evaluate exposures to children in a residential setting.

In general, the model generates a probability distribution of blood lead levels for a typical child, or group of children, exposed to a particular soil lead concentration and concurrent lead levels from other sources.

The spread of the distribution reflects the observed variability of blood lead levels in several communities. This variability arises from several sources, including behavioral and cultural factors.

The identification of lead levels from other sources (due to air, water, diet, etc.) is an essential part of characterizing the appropriate blood lead distribution for a specific neighborhood or site. For the purpose of deriving the 400 ppm value used in this guidance, the background lead exposure inputs

Continued

believes that the 400 ppm level serves as a reasonable current benchmark for the purposes of this guidance. Therefore, the Agency recommends that further evaluation and appropriate exposure-reduction activities be undertaken when soil lead concentrations exceed 400 ppm at areas expected or intended to be used by children.[9] (Recommendations for soil sampling and analysis are attached.) Further evaluation activities may include blood lead screening of children and others in the community.

When soil lead levels exceed 400 ppm and children are likely to be present, exposure-reduction responses should focus on interim controls designed to change use patterns and create barriers between children and contaminated soil. This involves taking steps to keep children away from certain areas and to reduce exposure to bare soil in accessible areas. As an example of changing the use pattern, thorny shrubs can be planted to keep children from playing around houses that have elevated soil lead concentrations immediately next to the house. Also, play equipment can be moved from bare soil contaminated areas to encourage children to play elsewhere or, for more highly contaminated areas, access can be restricted by fencing. As an example of the use of barriers to reduce exposure, grass or other groundcover can be established and maintained or the area can be covered with mulch or gravel. While the effectiveness of many of these interim control actions cannot yet be quantified, the Agency believes that they can reduce exposure. However, whenever interim controls are used, their condition should be monitored to ensure continued effectiveness. For example, the condition of plants, groundcover, etc., that serve as use-modifying and barrier-type elements should be visually inspected to ensure that they have become well established and remain effective at preventing exposure in accordance with the upcoming HUD Guidelines.

Within the range of 400 - 5,000 ppm, the degree of risk reduction activity should be commensurate with the expected risk posed by the bare soil, considering both the severity of exposure (as reflected by the soil lead concentration) and the likelihood of children's exposure. At concentrations in the lower segment, emphasis should be placed on reducing exposures through interim controls at those areas expected or intended to be used by children. If the area is not frequented by children, these exposure reduction activities may be less rigorous. Where bare-soil lead levels are found to be 2,000 ppm or more, interim controls should be implemented even if the area is not frequented by children.

Increasingly aggressive exposure-reduction activities are warranted at higher soil lead levels, with very high levels indicating that soil abatement may be necessary. For purposes of prioritizing abatements, the Agency recommends soil abatement when lead levels are found at 5,000 ppm or more in residential bare soil. Appropriate activities at this level of lead concentration may include removal and replacement of the soil, the use of more permanent covers (e.g., paving), or other activities. Of course, state and local agencies should consider any other factors that affect the actual risks and benefits of abatement when determining whether abatements may be necessary at lower levels, including, for example, prevalence of elevated blood lead levels in children.

The Agency is suggesting 5,000 ppm for this higher level because of the need to prioritize the types of activities that can often be resource intensive. Factors considered in the choice of this level include the risk reduction that may be achieved by different measures and the resources needed to reduce those risks. Consequently, this level is designed to indicate where there is a relatively higher certainty that abatement or other extreme activities would be appropriate from a risk reduction and resource prioritization perspective. Based upon estimates of residential soil lead distributions (from HUD, 1990), 5,000 ppm would target the soil at an estimated ½% of U.S. homes.

Because of the likelihood that lead-contaminated soil will have previously contributed lead to interior dust, specialized cleaning is recommended for the interior of residences to meet dust clearance levels after soil abatement or interim control activities have been conducted.

The Agency's recommendations for residential lead-contaminated soil are summarized in Table I.

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to the IEUBK model were determined using national averages, where suitable, or typical values. Thus, the estimated level of 400 ppm is associated with an expected ''typical'' response to these exposures, and should not be taken to indicate that a certain level of risk (e.g., exactly 5% of children exceeding 10 µg/dl blood lead) will be observed in a specific community (e.g., in a blood lead survey).

Because a child's exposure to lead involves a complex array of variables, because there is population sampling variability, and because there is variability in environmental lead measurements and background levels of lead in food and drinking water, results from the model may differ from results of blood lead screening of children in a community. Extensive field evaluation of the model is in progress and the model will be evaluated further once these efforts are completed. EPA may base the future section 403 rulemaking on the model once these evaluations have been completed, or on another methodology.

[9] 400 ppm is also used as the residential soil lead screening level for corrective Action under the Resource Conservation and Recovery Act (RCRA) and cleanups under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in the Office of Solid Waste and Emergency Response (OSWER) Interim Soil Directive. OSWER's screening level is not a ''cleanup standard,'' nor automatically as ''cleanup goal.'' Rather, it is a level of contamination above which there is enough concern to warrant site-specific study of risks.

TABLE 1.—EPA RECOMMENDATIONS FOR RESPONSE ACTIVITIES FOR RESIDENTIAL LEAD-CONTAMINATED BARE SOIL

| Area of Concern | Bare Soil Lead Concentration (ppm) | Recommended Response Activities |
|---|---|---|
| Areas expected to be used by children, including:<br>residential backyards,<br>daycare and school yards,<br>playgrounds,<br>public parks, and<br>other areas where children gather. | 400–5,000 | Interim controls to change use patterns and establish barriers between children and contaminated soil, including:<br>planting ground cover or shrubbery to reduce exposure to bare soil,<br>moving play equipment away from contaminated bare soil,<br>restricting access through posting, fencing, or other actions, and<br>control further contamination of area.<br>Monitor condition of interim controls.<br>Public notice of contaminated common areas by local agency. |
| | >5000 | Abatement of soil, including:<br>removal and replacement of contaminated soil, and permanent barriers.<br>Public notice of contaminated common areas by local agency. |
| Areas where contact by children is less likely or infrequent | 2000–5000 | Interim controls to change use patterns and establish barriers between children and contaminated soil, including:<br>planting ground cover or shrubbery to reduce exposure to bare soil,<br>moving play equipment away from contaminated bare soil,<br>restricting access through posting, fencing, or other actions, and<br>control further contamination of area.<br>Monitor condition of interim controls.<br>Public notice of contaminated common areas by local agency. |
| | >5000 | Abatement of soil, including:<br>removal and replacement of contaminated soil, and permanent barriers.<br>Public notice of contaminated common areas by local agency. |

**Relationship of Soil Levels in This Guidance to the OSWER Interim Soil Lead Directive**

A variety of Agency programs address lead under a number of statutes. Lead in soil is addressed under TSCA Title IV (including TSCA sections 402 and 403), the RCRA Corrective Action program, and CERCLA (Superfund), each of which differs somewhat in purpose and in the types of sites to which they apply. Title IV section 403 regulations, which have yet to be issued, will identify lead hazards in paint and residential dust and soil. RCRA Corrective Action applies to RCRA hazardous waste sites. CERCLA applies to sites that have been contaminated by releases of CERCLA hazardous substances (which include lead).

While this guidance applies to housing, which is a significant part of the coverage of TSCA Title IV, it is not issued under the legal standards of any of these statutes, nor is it to be used to support statutorily driven requirements of CERCLA or RCRA. Instead, the guidance is designed to allow screening of the worst sources of lead-contaminated soil related to the housing stock among the potentially huge number of sites affected. The top one percent of housing sites consists of about 1,000,000 locations.

Because there is such a large number of housing sites, the purpose of this guidance is to recommend a set of nationwide levels that will screen those sites at which, EPA expects, decisionmakers will want to consider various risk reduction activities. The higher the level and the more likely exposure will occur, the more aggressive the risk reduction activities undertaken should be. The ultimate decision, however, will be made locally by various federal, state and local officials, or by building owners, operators or occupants. These decisionmakers will need to consider a variety of issues, including the risk reduction to be achieved by different measures and the resources needed to reduce those risks. Given the wide applicability of this guidance, EPA has developed generic standards to deal with the most risky sites--in particular, those where the Agency feels most confident that actual adverse effects could occur.

The Agency's recommendations for evaluating RCRA Corrective Action and CERCLA sites are contained in the OSWER Interim Soil Lead Directive. The OSWER directive deals with a much smaller number of sites, at which extensive site characterization will have been performed before cleanup decisions are made. RCRA and CERCLA programs, thus, will often have site-specific exposure values, which may be in a relatively narrow range. As a result, values chosen for action under the RCRA or CERCLA programs may be different from those selected under this guidance. Also, once the section 403

regulations are promulgated, OSWER intends to issue a final (to replace the interim) directive.

**The Section 403 Rulemaking**

At present, the Agency's section 403 rulemaking activities are focused on a variety of technical issues related to more accurate assessment of the risks associated with residential lead-based paint, lead-contaminated dust, and lead-contaminated soil. These activities include continued analysis of models and slope studies, including evaluation of the range of environmental conditions over which they are adequate. Complicating factors include likely differences in the bioavailability of lead from different sources and the variability in dust lead levels on interior surfaces. Because the Agency's work on these issues involves ongoing as well as previously published research, additional time will be required before levels for lead-based paint hazards can be determined with more specificity and proposed in the section 403 rulemaking.

As a result of these additional investigations, the section 403 rulemaking may differ from this guidance in a number of areas. These may include the role of dust concentration (in addition to, or in place of, dust lead loading), the quantitative or relative degree of blood lead level reduction that may be targeted, methods to relate environmental lead measurements to expected blood lead levels, and holistic standards rather than specific levels for each exposure source.

**Attachments**

**Guidance for Measuring Lead in Soil and Paint**
**Sampling and Analysis of Dust for Clearance Testing**

**Guidance for Measuring Lead in Soil and Paint**

*July 1994*

*Preface*

Lead-contaminated house dust is considered the most significant source of lead poisoning for the greatest number of children. All house dust contains some lead; the amount depends on lead contamination from other sources such as deteriorated lead-based paint and lead-contaminated soil. Millions of children live in dwellings with high dust-lead levels and routinely put dust-laden fingers, toys, and other objects into their mouths. Deteriorated lead-based paint and soil also may individually contribute significantly to a child's lead exposure if ingested. However, a more common scenario is the contamination of house dust by paint and soil and the child's subsequent ingestion of the contaminated house dust. One way to control high house dust lead levels and dust-lead exposure is to control the sources of lead that contaminate house dust, namely lead-contaminated bare soil and deteriorated lead-based paint.

**Soil Sampling Overview**

Soil is a major reservoir of lead in our environment. It has been contaminated with lead from many years of airborne particulate fallout from automobile exhaust, from industrial sources, and from the extensive use of lead-based paint on residential housing and other structures. Children who play in bare soil may be directly exposed to lead. Soil tracked into the home (e.g., on shoes or by wind) contaminates house dust and, thus, may expose children through the dust medium. The purpose of this section is to assist the reader to develop and implement a soil sampling strategy to determine whether the soil outside of a dwelling poses a significant health hazard to children.

Because only areas of bare soil are considered likely lead hazards, the focus of this guidance is to assess lead levels in areas of bare soil.[10] While only bare soil needs to be sampled, a property owner may wish to have additional sites sampled if the ground covering on those sites may be disturbed by such activities as gardening or excavation.

A soil sampling strategy should be designed to:

- Identify the location of soil-lead hazards outside of the dwelling.
- Provide recommendations to the property owners or other interested parties on the best ways to control identified hazards.
- Do the assessment at an affordable price to enable most property owners in the United States to have such an assessment conducted.

Due to the diversity of housing stock in the U.S., residential soil-lead assessments must be done case-by-case. The federal government can provide only general guidelines on where to collect samples. Actual sampling locations are based on information obtained during a preliminary assessment of the property and on the professional judgment of the person collecting the samples.

If sample analysis costs were trivial, then numerous soil samples could be collected at each residence to fully characterize lead levels. But analytical cost, in the range of $15 per sample, is not trivial. Therefore, to keep costs affordable, the sampling strategy must limit the number of soil samples analyzed.

When collecting only a limited number of samples from a yard, the major source of uncertainty in the results is from collecting samples from very small areas relative to the total area of interest. Imagine that a single soil sample is collected from an unusually high, but small, lead-contaminated area, or from a small section of the yard that recently had lead-free potting soil spilled on it. Most of these variations are out of the control of or unknown to the person collecting samples. One simple approach to reduce this problem is to sample from larger areas.

The easiest and most cost-effective way to sample from larger areas is to collect field composite samples. A field composite sample consists of individual sub-samples collected from two or more locations and combined into one sample for analysis (the composite sample). When only a few samples can be feasibly analyzed at a residence due to time and money constraints, composite sampling offers a more cost-effective approach and provides more accurate information than collecting a few single location samples.

At least two composite samples per dwelling or building should be collected where bare soil is present. General sampling locations are as follows:

- one from bare soil in the child's principal play area(s) and
- one from bare soil areas in the front or back yard (if present) and/or from the foundation drip line.

Vegetable gardens, pet sleeping areas, and bare pathways are also potential sampling sites, depending on the situation.

Once sampling areas are identified, sub-sampling locations within these areas need to be determined. No more than 10 sub-samples should be collected into one composite sample. Without much gain in representativeness, combining more than 10 sub-samples in composite samples may add extra costs to laboratory lead analysis.

**Determining Collection Locations for Each Composite**

*Option A*

Sub-sampling locations in bare soil play areas are selected by first sketching the area and then drawing a circle just encompassing the accessible bare area. A second circle is drawn inside the first with one-half the radius and three equally-spaced sampling locations

[10] Title X defines ''Lead contaminated soil'' as bare soil on residential property that contains lead at or in excess of the levels determined by the EPA to be hazardous to human health.

selected at random on the inner circle. Soil sub-samples are then collected at each location. This process may be repeated for up to three bare soil play areas, if present.

To sample the building foundation or dripline, take four individual sub-samples. Where possible, given accessibility limitations and the availability of bare soil, each sub-sample should be located at random in a bare soil area at the dripline on a different side of the house. Composite the four individual foundation/dripline sub-samples into one sample for lead analysis. At other sampling locations in the yard, samples should be collected following the procedures for play areas.

*Option B*

Each composite sample should consist of bare area soil sub-samples collected from 3 to 10 distinct locations roughly equidistant from each other along an axis. For samples collected along the foundation dripline, sub-samples should be collected at least 2 to 6 feet away from each other. At other sampling locations, samples should be collected at roughly equidistant points along each axis of an ''x'' shaped grid.

**Sampling Equipment and Methods**

Samples may be collected using a coring tool to acquire the top 1/2 inch (or 1 centimeter) of the soil surface. Soil coring devices may not be useful in sandy, dry, or friable soil. In these cases, a stainless steel scoop or the lip of the sample container itself may be used.

If paint chips are in the core sample taken, they should be included as part of the sample. Paint chips should not be excluded from the soil sample, since they are part of the soil matrix. However, there should be no attempt to oversample paint chips. Following the detailed sampling procedures outlined in ''Residential Sampling for Lead: Protocols for Sampling Lead in Dust and Soil (EPA, 1994),'' is essential to correctly apply the guidance provided here.

**Interpreting Results**

Bare soil, if highly contaminated with lead, is thought to be a significant hazard to children who play on it. It may also be a significant source of tracked-in or wind-blown lead that subsequently contaminates house dust. The level of hazard is determined by comparing the sampling results to the section 403 soil lead guidance.

If duplicate composite samples are collected from the same bare soil area(s), the arithmetic average of the two lead levels should be compared to the Section 403 guidance. If non-composited individual samples are taken instead of composites, within an area expected to have relatively homogeneous lead levels, the arithmetic average of the individual samples should be compared to the standard. However, individual samples above the standard might possibly indicate that there are inherently large differences in lead levels and that more sampling or some remediation should be considered.

**Sampling and Testing for Lead in Paint**

**Where to Sample**

For a residential unit, all interior rooms, the exterior sides of the unit, and the outside property around the unit are to be inspected. The residence should be divided into room equivalents. Room equivalents are standard interior rooms, stairways and hallways which are not usually regarded as rooms, portions of very large rooms, each of the sides of the house, and the outside property. Within the room equivalents, painted components are to be identified and grouped by component type, substrate, and visible color. For example, if there are four walls in a room, all made of plaster, and all painted with white paint, these four walls are all grouped together. One wall of the four is to be randomly selected to represent the four walls. In similar fashion, the inspection continues in each room equivalent with the identification of unique combinations of component, substrate, and visible color. A random representative area of each unique combination is to be sampled and tested in each room equivalent.

For each of these designated components, an area on the component is to be chosen which represents the paint on that component. During the inspection, components which are accessible surfaces, friction surfaces, impact surfaces, or have deteriorated paint are to be identified.

**How Many Samples**

It is expected that between 50 to 200 components will be identified for testing at a residential unit.

In multifamily housing with more than 20 units, a random sample of units for inspection is allowed. Units and buildings that have similar construction, floor plans, and painting history should be grouped for sampling purposes. Samples may be selected for each group. In multifamily housing with 20 or fewer units, each unit is to be sampled. In both cases, individual units are to be sampled following the guidance on where to sample described for residential units. The number of units in the sample should be determined from Table I, which is attached. However, the decision logic for a sample of units is more complicated than for single residential units, and should be fully grasped before a sample is selected.

**How to Sample**

The recommended method for testing in a residential unit at this time is the K shell reading from a portable XRF instrument. Substrate corrections are to be made where necessary. Standard reference material paint films developed by NIST for usage with XRFs are to be used to demonstrate that XRF instruments are in control. XRF results are in units of milligrams per square centimeter.

An average of three readings is recommended. Each reading should be approximately 15 seconds with a new source. Appropriate adjustments in reading time should be made for source age.

Where portable XRF is not feasible due to a surface being narrow or curved, where greater accuracy is desired, or where comparison to the percent by weight standard is desired, paint samples can be collected and sent to a laboratory for analysis. The paint samples should be collected from a one square inch area. Care should be taken to collect all the paint in the area, and to minimize the inclusion of substrate material. Lead in paint samples collected in this way can be reported in both milligrams per square centimeter and percent by weight. If a surface is so deteriorated that XRF is not feasible and a paint sample cannot be collected from a square inch, then a strip of peeling paint is to be collected. Lead from such a sample can only be reported in percent by weight units.

**How to Analyze Paint Samples**

Paint chip samples should be analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. Paint samples should be no more than 500 milligrams in weight. If the paint samples received by the laboratory are larger than 500 milligrams, the laboratory should homogenize and subsample the paint samples to select a subsample of approximately 500 milligrams for the analysis. Results reported by the laboratory must make the appropriate adjustment for the subsampling.

**Conclusions**

For single houses and units, conclusions are reached as follows. XRF results are to be corrected for substrate effects where necessary. Corrected XRF results are divided into three categories: positive, inconclusive, and negative. Reading averages of 1.6 $mg/cm^2$ or more

are classified as positive; reading averages of 0.4 mg/cm² or less are classified as negative. All other reading averages are classified as inconclusive. K-shell XRF results in the positive category indicate lead is present at or above 1.0 mg/cm². K-shell XRF results in the negative category indicate lead is not present at or above 1.0 mg/cm². The probability of false positives is currently estimated to be at least less than 10%, and less than 5% in most cases. The probability of false negatives is similarly estimated to be at least less than 10%, and less than 5% in most cases. Inconclusive results should be confirmed by laboratory analysis. Inconclusive XRF results on accessible, impact, friction or deteriorated surfaces should be regarded as positive for lead unless a subsequent laboratory test proves otherwise.

When paint chip laboratory results are reported in milligrams per square centimeter, a result greater than or equal to 1.0 is positive for lead. When the results are in percent by weight, a result greater than or equal to 0.5% is positive for lead. If laboratory results are in both units, and at least one result is above the 1.0 mg/cm² or 0.5% standard, then the sample is positive for lead.

Locations tested by XRF or paint chip sampling may represent other locations. Refer back to the original inspection to determine the housing components which the samples represent. Findings of positive, negative, or inconclusive apply to all the components represented by a sample.

For multi-family housing of 20 or more units where a sample of units has been selected, group the sample results by component type, such as ''kitchen walls'' or ''doors.'' Each component type group should consist of at least 40 samples to the extent this is practical. Classify XRF results as positive, inconclusive, or negative following the rules above. For any component type with 20% or more positive results, lead is present at or above the 1.0 mg/sq on one or more of the components of that type. If all sample results are negative or all sample results are less than 1.0 mg/cm², lead is not present at or 1.0 mg/cm² on any components of that type. All other cases are inconclusive and require laboratory testing.

To do the laboratory testing, take a paint sample for all XRF sample results that were greater than or equal to 1.0 mg/cm². If any of these results are positive, reach the conclusion that lead is present at or above 1.0 mg/cm² on at least one component of the type in question. If no results are positive, reach the conclusion that lead is not present at or above 1.0 mg/cm² for any components of that type. Results from the sample can be used to determine which component types need abatement or control, which do not, and which need further testing in the unsampled units.

TABLE 1.—NUMBER OF UNITS TO BE TESTED IN MULTIFAMILY DEVELOPMENTS

| No. of units in building or group of similar buildings | No. of units to be tested |
|---|---|
| 21–26 | 20 |
| 27 | 21 |
| 28 | 22 |
| 29–30 | 23 |
| 31 | 24 |
| 32 | 25 |
| 33–34 | 26 |
| 35 | 27 |
| 36 | 28 |
| 37 | 29 |
| 38–39 | 30 |
| 40–50 | 31 |
| 51 | 32 |
| 52–53 | 33 |
| 54 | 34 |
| 55–56 | 35 |
| 57–58 | 36 |
| 59 | 37 |
| 60–73 | 38 |
| 74–75 | 39 |
| 76–77 | 40 |
| 78–79 | 41 |
| 80–95 | 42 |
| 96–97 | 43 |
| 98–99 | 44 |
| 100–117 | 45 |
| 118–119 | 46 |
| 120–138 | 47 |
| 139–157 | 48 |
| 158–177 | 49 |
| 178–197 | 50 |
| 198–218 | 51 |
| 219–258 | 52 |
| 259–299 | 53 |
| 300–379 | 54 |
| 380–499 | 55 |
| 500–776 | 56 |
| 777–1004 | 57 |
| 1005–1022 | 58 |
| 1023–1039 | 59 |

For buildings or groups of similar buildings with 1,040 units or more, test 5.8 percent of the number of units, rounded to the nearest unit. EXAMPLE: If there are 2,170 units, 5.8 percent is 125.86 units, so 126 units should be tested.

## Dust Clearance Testing

*July 1994*

### Background

Section 403 of the Residential Lead–Based Paint hazard Reduction Act of 1992 requires EPA to promulgate regulations which identify lead–based paint hazards, lead–contaminated dust, and lead–contaminated soil. The purpose of this document is to summarize clearance testing procedures to identify lead dust hazards that may remain after lead abatements or application of interim controls.

### Who Should Sample

Clearance testing for dust should be conducted after lead abatements or after application of interim controls. Clearance testing should be conducted by a party independent of the person or organization that completed the abatement or interim controls.

### When to Sample

Sampling of dust should take place at least one hour after completion of all abatement and interim control work, including clean–up. All interior rooms or areas and exterior areas should be visually clean before collecting dust samples. If this is not the case, clean the rooms and areas before starting dust collection for clearance testing.

### Where to Sample

Identify the interior rooms or areas and exterior areas of the residence where abatements or interim controls were carried out. If there was an interior containment area, most of the clearance sampling should be conducted within the containment area. If there was no interior containment area, all interior rooms or areas should be sampled. Designate rooms or areas in the interior for sampling. An interior area is a portion of a the residence that is equivalent to a room, even though it is not ordinarily regarded as such. Hallways and stairways are examples of areas in a house. In addition, very large rooms should be divided into areas.

If on–site paint removal took place in the interior, collect one floor sample, one interior window sill sample, and one exterior window sill sample from each of the interior rooms or areas designated for sampling. If no on–site paint removal took place in the interior, select one floor sample and one window sample, either an interior or exterior sill, in each room or area designated for sampling.

If there were any exterior abatements or interim controls, select one exterior window sill and one other horizontal surface in a living area or near an

entryway for testing, preferably from the sides or exterior areas of the house where abatements or controls were applied. A porch railing or the top step of a stairway are examples of horizontal surfaces on the exterior. If there was an interior containment area, collect one floor sample outside the containment area but within 10 feet of the airlock.

**How Many Samples**

The total number of samples will depend on the number of interior rooms, the presence of an interior containment area, whether there was any exterior work, the number of windows present, and the presence of horizontal surfaces on the exterior.

For example, consider a single family house with 8 interior rooms and areas. In this case suppose abatement had taken place in 4 of the interior rooms, and on the front and back of the house. There was no interior containment area, and on–site removal of paint took place in the interior. All rooms had windows. There would be 26 dust samples for this house, 3 from each of the 8 interior rooms or areas, and 2 from the exterior.

As another example, consider another house with 8 interior rooms or areas. Suppose abatement had taken place in the interior, in 5 rooms, with a containment separating these 5 rooms from the rest of the house. Suppose no on–site removal of paint had taken place. There would be 11 interior dust samples, 2 from each of the 5 rooms where abatements were done, plus one floor sample within 10 feet of the containment area. If there had been any exterior work, 2 dust samples would have been collected from the exterior.

In multi–family housing of more than 20 units, random sampling of units for clearance testing is allowed. Units and buildings that have similar construction and were cleaned in the same manner should be grouped for sampling purposes. Samples may be selected for each group. The number of units in the sample should be derived from Table I, which is attached. In this case, guidance on where to sample for the selected units is the same as for an individual house. However, if any component in the sample of units fails clearance, that component, in all the unsampled units, must be re–cleaned, as well as the specific components that failed clearance in sampled units. The significance of this aspect of clearance failure should be grasped before selecting a sample of units.

**How to Sample**

Draw or obtain a floor plan of the house or unit. Rooms, areas, and locations of windows should be clearly marked on the floor plan. If there were exterior abatements, identify the window exterior sills and horizontal surfaces closest to the exterior areas that were worked on. Using information about the abatement or interim control applications, designate interior rooms and areas and exterior areas for sampling.

Using the floor plan, go through the residence and make selections of where to sample. For floors, divide each room or area into three segments, randomly select one of the segments, and then, within the segment, randomly select either a position near a wall or a position near the center. If there is one window in a room or area, that window should be sampled. If there is more than one sample, randomly select an interior window sill and/or an exterior window sill. Note that if there are two or more windows in a room, the interior and exterior sills may come from different windows.

The basic method for collecting dust clearance samples is the wipe method. Other dust collection methods may be used provided the user establishes comparability to the wipe method.

To collect floor samples, use a template or tape to mark off one square foot within the floor location selected. Use a wipe method to collect dust within the template or taped area. Clean the template between samples if using a non–disposable template. Take other appropriate steps to avoid contamination of samples.

For sampling interior and exterior window sills and exterior horizontal surfaces, use tape to mark the specific section to be sampled. Be sure what is delineated by the tape can be measured.

After collection of dust, fold the wipe and place it in a clean glass or plastic container. Label the container so that the sample can be associated with the location from which it was collected. Measure all sampling areas not delineated by the template, and in all cases indicate the sampling area on each label for each container.

**How to Analyze Dust Samples**

Dust samples are to be analyzed for ''total lead,'' not ''bioavailable lead.'' Samples should be analyzed at a laboratory recognized as proficient for lead in dust analysis by the EPA National Lead Laboratory Accreditation Program (NLLAP).

**Conclusions**

At this time, the standards for clearance are 100 μg/ft² for floors, 500 μg/ft² for interior window sills, and 800 μg/ft² for exterior window sills and exterior horizontal surfaces. These numbers are for wipe samples. If a collection method other than the wipe method is used, the user is responsible for providing comparable standards for clearance.

Samples which are less than the appropriate standard are said to have passed clearance, and all rooms or areas represented by those samples have passed clearance.

Samples above or equal to the appropriate standard have failed clearance, and all rooms or areas represented by those samples are said to have failed. For samples that have failed, the components represented by those samples (floors, interior window sills, exterior window sills, exterior horizontal surfaces, or interior areas outside a containment area) must be re–cleaned and re–tested. The process continues until clearance is obtained for all components. In addition, if a sample outside a containment area fails clearance, collect additional floor samples outside the containment area, at a further distance from the airlock, during the re–testing.

*Re–evaluation Schedule*

When lead–based paint is removed during abatement, successful clearance testing after application is all that is recommended. When lead–based paint remains at the residence, re–evaluation testing is recommended in addition to clearance testing. For enclosures, re–evaluation testing is recommended 10 years after treatment. For encapsulation, re–evaluation testing is recommended 1 year after application, and then every 3 years afterwards. For interim controls, re–evaluation testing is recommended every 12 months after application. If a mixture of methods is used in a room or area, the most stringent schedule for re–evaluation testing is recommended.

Dated: August 30, 1995.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 95–22497 Filed 9–8–95; 8:45 am]

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federal register

Monday
September 11, 1995

# Part VI

# Department of Housing and Urban Development

## Office of the Secretary

**24 CFR Part 1 et al.**
**Elimination of Obsolete Parts; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Subtitle A, and Parts 1, 3, 8, 11, 15, 16, 24, 39, 40, 49, 86, 90, 103, 106, 120, 130, 200, 205, 209, 210, 211, 224, 225, 226, 227, 228, 229, 238, 240, 250, 270, 271, 277, 278, 500, 511, 575, 577, 578, 579, 580, 595, 596, 598, 599, 600, 811, 900, 907, 965, 967, 1730, 1800, 1895, 2700

**[Docket No. FR–3922–F–01]**

**RIN 2501–AC00**

## Elimination of Obsolete Parts

**AGENCY:** Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes from title 24 of the Code of Federal Regulations the Department's regulations and codified guidance which are unnecessary or obsolete. Following a review of existing HUD regulations in accordance with the President's regulatory reinvention initiative, the Department has determined that the regulatory parts and other codified materials identified in this rule are unnecessary to be retained in the Code of Federal Regulations because the parts address obsolete programs that have been repealed, are no longer funded, or by new legislation have been consolidated into other programs; no regulatory requirements are included in the parts and therefore the provisions of these parts need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks; the parts cover expiring programs, that is, there are only a few outstanding mortgages or contracts, which will either continue to be administered under the regulations that existed immediately before October 11, 1995 or be directed under individual contracts or grant agreements; or the parts relate to functions that have been transferred to another agency.

**EFFECTIVE DATE:** October 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Camille E. Acevedo, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708–3055; TDD: (202) 708–3259.

**SUPPLEMENTARY INFORMATION:** President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative'' directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule removes those parts (and subdivisions of parts) which represent regulations and other materials which are unnecessary or obsolete, as further categorized and listed below. Guidance presently provided in appendices and non-regulatory guidance presently codified will be available through other non-rulemaking means.

To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

The Department has also reviewed its other existing regulations, and those regulations will be amended as appropriate to eliminate or revise outdated provisions, reduce burden, and increase flexibility. The Department is seeking appropriate statutory changes if legislative authority is required in order to achieve regulatory reform.

*Parts (and subdivisions of parts) obsolete because the programs have been repealed, are no longer funded, or by new legislation have been consolidated into other programs:* 49, 90, Appendix D to Subtitle A, 103 (Appendix only), 120, 200 (subparts L and N only), 210, 211, 229, 238, 250, 270, 271, 500, 575, 580, 595, 596, 598, 599, 600, 811 (subpart B only), 965 (subpart F only), 1730, 1800, 1895, 2700.

*Parts and other guidance unnecessary because no regulatory requirements are included and the provisions need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks:* 1 (Appendix A only), 3, 8 (Appendices A and B only), 11, 15 (subpart D only), 16 (Appendix A only), 24 (Appendices A, B, and C only), 39, 40 (Appendix A only), 86 (Appendices A and B only), 106, 200 (subpart B only), 967.

*Parts for expiring programs, under which there are only a few outstanding mortgages or contracts:*

To the extent local programs are still ongoing under the following repealed parts or subparts, their repeal does not affect the requirements which apply to those programs under the applicable contracts or grant agreements.

1. The programs associated with the following parts will continue to be administered under the regulations that existed immediately before October 11, 1995: 205, 209, 224, 225, 226, 227, 228, 240, 277, 278.

This rule amends 24 CFR part 200 to add a new subpart W, which lists the parts associated with expiring programs and states that any existing loan assistance, ongoing participation, or insured loans under these parts will continue to be governed by the regulations in effect as they existed immediately before October 11, 1995.

2. The programs associated with the following parts will be directed by individual contracts or grant agreements, which may be unilaterally amended to incorporate the regulatory provisions being deleted by this rule: 511 (subpart C, E, and G only), 577, 578, 579, 900, 907.

*Parts unnecessary because the functions have been transferred to another agency:* 130.

*Justification for Final Rule*

In accordance with 24 CFR part 10, it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely remove unnecessary or obsolete regulatory provisions. Removal of these regulations does not establish or affect substantive policy. Therefore, the Department has determined that public comment is unnecessary and contrary to the public interest.

### Other Matters

*Environmental Finding*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule pertains to the administrative matter of removing obsolete or unnecessary parts from the Code of Federal Regulations.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

*Semiannual Agenda*

This rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368), pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 1*

Administrative practice and procedure, Civil rights, Reporting and recordkeeping requirements.

*24 CFR Part 3*

Authority delegations (Government agencies).

*24 CFR Part 8*

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

*24 CFR Part 11*

Seals and insignia.

*24 CFR Part 15*

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

*24 CFR Part 16*

Privacy.

*24 CFR Part 24*

Administrative practice and procedure, Drug abuse, Government contracts, Government procurement, Grant programs, Loan programs, Reporting and recordkeeping requirements.

*24 CFR Part 39*

Energy conservation, Housing, Loan programs—housing and community development.

*24 CFR Part 40*

Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 49*

Aliens, Grant programs—housing and community development, Loan programs—housing and community development, Mortgage insurance.

*24 CFR Part 86*

Administrative practice and procedure, Lobbying (Government agencies), Reporting and recordkeeping requirements.

*24 CFR Part 90*

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

*24 CFR Part 103*

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

*24 CFR Part 106*

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Mortgages.

*24 CFR Part 120*

Fair housing, Grant programs—housing and community development.

*24 CFR Part 130*

Administrative practice and procedure, Equal employment opportunity, Government contracts, Housing, Reporting and recordkeeping requirements.

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 205*

Community facilities, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 209*

Mortgage insurance.

*24 CFR Part 210*

Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 211*

Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 224*

Military personnel, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 225*

Military personnel, Mortgage insurance.

*24 CFR Part 226*

Government employees, Mortgage insurance.

*24 CFR Part 227*

Federally affected areas, Military personnel, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 228*

Federally affected areas, Mortgage insurance, National defense.

*24 CFR Part 229*

Federally affected areas, Mortgage insurance, National defense, Reporting and recordkeeping requirements.

*24 CFR Part 238*

Insurance, Investments, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 240*

Mortgage insurance.

*24 CFR Part 250*

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

*24 CFR Part 270*

Appalachia, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing.

*24 CFR Part 271*

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Technical assistance.

*24 CFR Part 277*

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing.

*24 CFR Part 278*

Aged, Grant programs—housing and community development, Individuals with disabilities, Low and moderate income housing, Nutrition.

*24 CFR Part 500*

Grant programs—housing and community development, Loan programs—housing and community development, Urban renewal.

*24 CFR Part 511*

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 575*

Civil rights, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

*24 CFR Part 577*

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 578*

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 579*

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

*24 CFR Part 580*

Grant programs—housing and community development, Urban renewal.

*24 CFR Part 595*

Community development, Grant programs—housing and community development, Urban renewal.

*24 CFR Part 596*

Community development, Indians, Intergovernmental relations.

*24 CFR Part 598*

Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

*24 CFR Part 599*

Grant programs—housing and community development, Grant programs—natural resources, Public lands.

*24 CFR Part 600*

American Samoa, Community facilities, Energy conservation, Environmental protection, Grant programs—housing and community development, Guam, Housing, Indians, Intergovernmental relations, Northern Mariana Islands, Pacific Islands Trust Territory, Reporting and recordkeeping requirements, Virgin Islands.

*24 CFR Part 811*

Public housing, Securities, Taxes.

*24 CFR Part 900*

Grant programs—housing and community development, Rent subsidies.

*24 CFR Part 907*

Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 965*

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

*24 CFR Part 967*

Grant programs—housing and community development, Public housing.

*24 CFR Part 1730*

Consumer protection, Land sales.

*24 CFR Part 1800*

Energy conservation, Grant programs—energy, Loan programs—energy, Penalties, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 1895*

Energy conservation, Organization and functions (Government agencies), Seals and insignia, Solar energy.

*24 CFR Part 2700*

Loan programs—housing and community development, Mortgage insurance, Mortgages.

Accordingly, pursuant to the Secretary's authority under 42 U.S.C. 3535(d), subtitle A and chapters I, II, V, VI, VIII, IX, X, XI, and XV of title 24 of the Code of Federal Regulations are amended as follows:

**Subtitle A—[Amended]**

1. Subtitle A is amended by removing:
a. Appendix A from part 1;
b. Part 3;
c. Appendices A and B from part 8;
d. Part 11;
e. Subpart D from part 15;
f. Appendix A from part 16;
g. Appendices A, B, and C from part 24;
h. Part 39;
i. Appendix A from part 40;
j. Part 49;
k. Appendices A and B from part 86;
l. Part 90; and
m. Appendix D to subtitle A.

**Chapter I—[Amended]**

2. Chapter I is amended by removing:
a. The appendix from part 103; and
b. Parts 106, 120, and 130.

**Chapter II—[Amended]**

3. Chapter II is amended by amending part 200 by removing subparts B, L, and N, and by adding a new subpart W, consisting of § 200.1301, to read as follows:

## PART 200—INTRODUCTION

* * * * *

### Subpart W—Administrative Matters

**§ 200.1301 Expiring Programs—Savings Clause.**

No new loan assistance, additional participation, or new loans are being insured under the programs listed below. Any existing loan assistance, ongoing participation, or insured loans under these programs will continue to be governed by the regulations in effect as they existed immediately before October 11, 1995:

Part 205 Mortgage Insurance for Land Development [Title X]
Part 209 Individual Homes; War Housing Mortgage Insurance [Sec. 603]
Part 224 Armed Services Housing—Military Personnel [Sec. 803]
Part 225 Military Housing Insurance [Sec. 803]

Part 226 Armed Services Housing—Civilian Employees [Sec. 809]
Part 227 Armed Services Housing—Impacted Areas [Sec. 810]
Part 228 Individual Residences; National Defense Housing Mortgage Insurance [Sec. 903]
Part 240 Mortgage Insurance on Loans for Fee Title Purchase
Part 277 Loans for Housing for the Elderly or Handicapped
Part 278 Mandatory Meals Program in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped

**Chapter II—[Amended]**

4. Chapter II is further amended by removing parts 205, 209, 210, 211, 224, 225, 226, 227, 228, 229, 238, 240, 250, 270, 271, 277, and 278.

**Chapter V—[Amended]**

5. Chapter V is amended by removing:
a. Part 500;
b. Subparts C, E, and G from part 511; and
c. Parts 575, 577, 578, 579, 580, 595, 596, 598, and 599.

**Chapter VI—[Amended]**

6. Chapter VI is amended by removing part 600.

**Chapter VIII—[Amended]**

7. Chapter VIII is amended by removing subpart B from part 811.

**Chapter IX—[Amended]**

8. Chapter IX is amended by removing:
a. Parts 900 and 907;
b. Subpart F from part 965; and
c. Part 967.

**Chapter X—[Amended]**

9. Chapter X is amended by removing part 1730.

**Chapter XI—[Amended]**

10. Chapter XI is amended by removing parts 1800 and 1895.

**Chapter XV—[Amended]**

11. Chapter XV is amended by removing part 2700.

Dated: August 30, 1995.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 95–22384 Filed 9–8–95; 8:45 am]

BILLING CODE 4210–32–P

# Reader Aids

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## CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

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[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.