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# federal register

Monday
March 6, 1995

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 543, 552, and 571

**[No. 94–158]**

**RIN 1550–AA76**

## ''De Novo'' Applications for a Federal Savings Association Charter

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Thrift Supervision (OTS or Office) is today proposing a regulation incorporating, with certain changes, its current statement of policy on ''*de novo*'' applications for a federal savings association charter (Policy Statement). The proposed changes are intended not only to make the Policy Statement into a regulation, but also to conform it with current law and to facilitate the application process by simplifying the regulatory scheme, thereby reducing the cost of compliance.

The Federal Home Loan Bank Board (FHLBB), the OTS's predecessor agency, originally promulgated the Policy Statement to provide specific guidance on the content of *de novo* applications. Many provisions in the current Policy Statement have, however, become obsolete or redundant, or are otherwise unnecessary, as a result of changes in federal laws and regulations addressing capital adequacy, business plans, officer and director qualifications, insider conflicts of interest and transactions with affiliates. These revised statutes and regulations now adequately address many of the issues previously covered by the Policy Statement. Because the remaining revised OTS *de novo* provisions contain requirements, not merely guidance, the OTS believes that they should be recodified as a regulation.

**DATES:** Comments must be received on or before May 5, 1995.

**ADDRESSES:** Send comments to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 94–158. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5:00 P.M. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

**FOR FURTHER INFORMATION CONTACT:** Gary Masters, Financial Analyst, Corporate Activities Division (202) 906–6729; Therese L. Monahan, Project Manager, Thrift Policy (202) 906–5740; or Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The OTS today proposes a new regulation to revise and update its treatment of *de novo* applications for federal savings association charters.

The FHLBB originally promulgated the Policy Statement, which appears at section 571.6 of the OTS's rules,[1] to explain its policies relating to the approval of insurance applications for newly created, so-called *de novo*, institutions. At that time, the FHLBB was the operating head of the Federal Savings and Loan Insurance Corporation, the insurance fund for thrifts, and *de novo* applications included not only applications for permission to organize and requests for a federal charter, but also applications for insurance of accounts.[2] Sweeping statutory reforms in the past few years, particularly the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[3] (FIRREA), and the Federal Deposit Insurance Corporation Improvement Act of 1991[4] (FDICIA), have effected significant changes in the structure of the agency and the scope of its mission. For example, under FIRREA, the OTS succeeded to the chartering and supervisory functions of the FHLBB, but the insurance function was transferred to the Federal Deposit Insurance Corporation (FDIC).

FIRREA and FDICIA have also rewritten much of the substantive law relevant to the OTS's *de novo* approval process. For instance, section 32 of the Federal Deposit Insurance Act (FDIA), which was added by section 914 of FIRREA, requires officers and directors for a *de novo* to be approved by the OTS.[5] In addition, the OTS's regulations regarding transactions with affiliates and conflicts of interest have been substantially revised due to the incorporation, through section 11 of the Home Owners' Loan Act (HOLA),[6] of the substance of sections 23A, 23B, 22(g) and 22(h) of the Federal Reserve Act (FRA). Finally, the OTS's policy concerning net worth maintenance agreements also has changed; such agreements are no longer required in the context of *de novo* applications.

Although the Policy Statement has been amended over the years to integrate some of these changes in the law,[7] a thorough revision is now warranted to conform the OTS's de novo chartering policies with the totality of significant statutory and regulatory changes that have recently occurred.

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[1] Unless otherwise indicated, all references to specific parts and sections in text will be to title 12 of the Code of Federal Regulations.

[2] A bank or other depository institution that converts to a thrift charter is not a *de novo* association, as that term is defined under the current OTS Policy Statement. The definition excludes ''any entity the business of which has been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association.'' *See* 12 CFR 571.6(g). Thus, the provisions of the Policy Statement do not apply to such conversions. The requirements of the qualified thrift lender test do, however, apply. For purposes of the qualified thrift lender test, the term ''*de novo* association'' includes any newly chartered thrift (including a bank that converts to a thrift charter). This result is consistent with the intent and purpose of the qualified thrift lender test. *See* OTS Chief Counsel's Op., March 11, 1992.

[3] Pub. L. No. 101–73, 103 Stat. 183 (1989).

[4] Pub. L. No. 102–242, 105 Stat. 2236 (1991).

[5] *See* OTS Thrift Bulletin No. 45 (April 25, 1990).

[6] 12 U.S.C.A. 1468 (West Supp. 1994).

[7] *See* 48 FR 51270 (November 7, 1983); 48 FR 54320 (December 2, 1983); 54 FR 49411 (November 30, 1989).

The OTS, therefore, proposes to remove obsolete statutory references, eliminate redundancy, enhance where possible consistency with the policies of other federal banking agencies, clarify the OTS's most recent policy considerations, and generally provide for more flexible standards for processing applications for the establishment of *de novo* federal savings associations. The OTS also intends to recodify these provisions as part of its regulations on the incorporation of federal savings associations.

## II. Statutory and Regulatory Requirements

### *A. Statutory Requirements*

The statutory chartering and insurance framework initially established by FIRREA provided that the FDIC could insure the accounts of a *de novo* federal savings association upon application by the savings association and upon receipt by the FDIC of a certificate issued by the Director of the OTS.[8] The OTS, as chartering authority for federal savings associations, was required to certify to the FDIC that it had considered certain factors, set forth at section 6 of the Federal Deposit Insurance Act (FDIA), in granting a federal thrift charter. These factors included: (1) the financial history and condition of the association; (2) the adequacy of its capital structure; (3) its future earnings prospects; (4) the character and fitness of its proposed management; (5) the risk presented to the insurance fund; (6) the convenience and needs of the community to be served; and (7) whether the association's proposed corporate powers would be consistent with the purposes of the FDIA.[9]

FDICIA removed this certification requirement. Instead, a *de novo* federal savings association may obtain insurance of its accounts ''upon application and examination by the [FDIC] and approval by the [FDIC] Board of Directors * * *.'' [10] In acting on the application for insurance, the FDIC Board is required to consider the statutory factors enumerated at section 6 of the FDIA and set forth above. FDICIA made no changes to the section 6 factors. The FDIC has issued a Statement of Policy Regarding Applications for Deposit Insurance (FDIC Policy Statement) which establishes the standards used by the FDIC in granting deposit insurance and provides guidelines for making applications for insured status.[11]

Although the OTS is no longer required to certify to the FDIC that it has considered the factors in section 6 of the FDIA, section 5(e) of the HOLA [12] requires the OTS to make findings that resemble the section 6 factors before granting a federal charter. Section 5(e) of the HOLA requires the OTS to determine: (1) the character of the organizers; (2) the need for the association in the community to be served; (3) the reasonable probability of the association's usefulness and success; and (4) whether the association can be established without undue injury to existing local thrift and home financing institutions. In addition, pursuant to the Community Reinvestment Act of 1977 [13] (CRA), the OTS must assess the new institution's proposed CRA statement and plans for meeting the credit needs of its community (including low- and moderate-income neighborhoods) and must take that assessment into account in determining whether to grant a charter.

### *B. Current OTS Policy Statement*

*Minimum Capitalization Requirement and Business and Investment Plans.* The current OTS Policy Statement sets the minimum level of capitalization for *de novo* institutions at $3 million, with a provision that the Office will consider approving a *de novo* applicant having at least $2 million if certain criteria are met. Among those criteria are that the applicant would be located in, and intended to serve, an area with a population not exceeding 50,000, and that the applicant will be community-oriented.

The current OTS Policy Statement provides that the Office must consider certain factors in order for an applicant to obtain insurance of accounts by the FDIC. Among the factors to be considered are the association's future earnings prospects, the general character and fitness of the association's management, and the convenience and needs of the community to be served. The Office may grant a new charter only if, among other things, in the judgment of the Director a necessity exists for such association in the community to be served.

*Policies Pertaining to Management Officials.* The current OTS Policy Statement requires controlling shareholders to personally agree to maintain the association's required regulatory capital for a minimum of five years. It also contains provisions requiring the filing of a plan to identify areas where conflicts of interest and abuse of corporate opportunity may occur.

*Standard Approval Conditions.* Currently, standard conditions on application approvals are not listed in the policy statement. Standard conditions, however, are imposed for all approvals of *de novo* applications and are contained in the OTS's Applications Processing Handbook.

## III. Description of Proposed Revisions

### *A. Deletion of Obsolete Statutory References and Deletion of Certain Duplicative Factors*

The proposal would delete obsolete statutory references. Current § 571.6(b) contains language requiring that the OTS certify to the FDIC that it has considered the factors listed under section 5(a)(2) of the FDIA.[14] Since FDICIA eliminated this certification requirement from the statute, we propose a parallel deletion from the rule. These pre-FDICIA certification requirements are also contained in §§ 543.2(g)(2) and 552.2–1(b)(2), which address the organization of federal mutual and federal stock institutions, respectively. We similarly propose to delete these sections in their entirety.

The proposal would also delete current section 571.6(b)(2), which contains language regarding certain factors considered in evaluating applications to organize a federal savings association. Among others, these factors require the agency to consider whether there is a reasonable probability of the association's usefulness and success, and whether, in the judgment of the Director of the OTS, a necessity exists for the association in the community to be served. These factors are duplicative of the factors that already appear in sections 543.2(g)(1) and 552.2–1(b)(1).

### *B. Other Proposed Revisions*

*Minimum Capitalization and Business Plan Requirements.* The proposal revises the minimum capitalization and business plan requirements for *de novo* applicants. When the Policy Statement was first adopted, since *de novo* applicants did not have a proven ''track record'' or a supervisory history, the FHLBB believed it was appropriate to set a minimum level of capitalization for *de novo* associations. In addition, the FHLBB

[8] 12 U.S.C.A. 1815(a)(2) (West 1989).

[9] 12 U.S.C.A. 1816 (West 1989).

[10] 12 U.S.C.A. 1815 (a)(1) (West Supp. 1994).

[11] 57 FR 12825 (April 13, 1992).

[12] 12 U.S.C.A. 1464(e) (West Supp. 1994).

[13] Community Reinvestment Act of 1977, Pub. L. No. 95–128, tit. 8, sec. 802, 91 Stat. 1147 (*codified at* 12 U.S.C. 2901, *et seq.* (1980)).

[14] 12 U.S.C.A. 1815(a)(2) (West 1989).

believed that *de novo* associations, as new companies, presented risks not associated with other institutions. These minimum capitalization requirements were intended to ensure that a *de novo* institution commenced operations in a safe and sound manner and to protect the insurance fund. To the same end, the FHLBB also required submission of detailed information on the institution's business plan for its first few years of operation, including descriptions of proposed management, management policies, investment policies and operations.

Minimum capitalization and business plan requirements remain appropriate safeguards because of the absence, in the case of a *de novo*, of any operating or supervisory history. However, those requirements would be revised by today's proposal.

Under the proposal, the standard minimum capitalization requirement would be decreased from $3 million to $2 million. The OTS could impose a higher or lower capital requirement on a case-by-case basis. The proposal would conform the minimum capitalization requirement to that of the insuring agency, the FDIC,[15] while providing flexibility and information vital to the OTS in making its statutorily required determinations. It also would streamline the *de novo* application process and reduce the financial burden on applicants wishing to organize federal *de novo* institutions.

In securities offerings for a *de novo* institution, the OTS proposes that all securities of a particular class in the initial offering be sold at the same price. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of the securities offering.

The business plan provisions have been revised to consolidate certain provisions, to bring the requirements up-to-date, and to delete obsolete statutory references. The proposal clarifies the required elements of the business plan, including descriptions of lending, leasing and investment activity, plans for meeting the qualified thrift lender requirements, deposit, savings and borrowing activity, compliance with the CRA, continuation or succession of competent management, and information on the proposed institution's ability to maintain required minimum regulatory capital levels.

*C. Policies Pertaining to Management Officials*

*Capital Maintenance Requirements.* The proposal would delete the current capital maintenance requirements in order to conform to the current OTS policy. Current § 571.6(d)(4) requires controlling shareholders to agree to maintain a *de novo* association's required regulatory capital level for a minimum of five years. Controlling shareholders are also prohibited from pledging more than 50% of their stock to secure borrowed funds to finance their stock purchase for a period of three years.[16] Under the proposal, the provisions requiring controlling shareholders to execute capital maintenance agreements have been deleted and replaced by a new provision that requires a certification by legal counsel that the establishment of the *de novo* institution has been consummated in accordance with the provisions of all applicable laws and regulations, the application, and the Office's order. These changes will streamline the application process, conform the process to current OTS rules and policy and will reduce the burden on organizers of a federal *de novo* institution.

Since 1991, it has been the OTS's policy generally not to require prospectively the execution of capital maintenance agreements by controlling shareholders of a *de novo* institution. Under the Prompt Corrective Action provisions of section 38 of FDICIA,[17] which were enacted in 1991, and as implemented by OTS regulations,[18] the OTS may not approve a capital restoration plan for any ''undercapitalized'' institution unless each company that controls the institution guarantees the institution's compliance with the plan until it has been adequately capitalized for four consecutive quarters and unless each such company provides adequate assurances of performance of the plan. Thus, sufficient statutory and regulatory protections currently exist to assure that savings associations maintain adequate capital and to deal with capital deficiencies promptly and thoroughly.

*Conflicts of Interest and Usurpation of Corporate Opportunity.* The proposal would delete provisions requiring the organizers of a *de novo* to file a plan identifying areas where conflicts of interest and abuse of corporate opportunity may occur and describing specific policies and actions that the association will institute to avoid that abuse. Existing statutory and regulatory requirements obviate the need for this information in the application process. For instance, section 571.9, the OTS's ''Corporate Opportunity Statement of Policy,'' makes clear that directors, officers and other persons having the power to direct the management of a savings association stand in a fiduciary relationship to the association and its accountholders or shareholders that requires them to avoid conflicts of interest and self-dealing.

The Corporate Opportunity Statement of Policy prohibits usurpation of corporate opportunities by insiders, if taking advantage of a business opportunity would breach their fiduciary obligations. The purpose of the Corporate Opportunity Statement of Policy, which was intended ''to codify existing common law fiduciary principles,'' [19] is to protect savings associations from managers and controlling parties who might divert beneficial business opportunities from their savings associations to themselves or their affiliates in violation of applicable fiduciary rules.[20]

Concerns relating to the avoidance of conflicts of interest and usurpation of corporate opportunity are addressed not only through the Corporate Opportunity Statement of Policy, but also by the statutory requirements governing transactions between savings associations and their affiliates and insiders. Transactions with affiliates and insider transactions at savings associations have become subject to the comprehensive statutory and regulatory framework that applies to banks under sections 23A, 23B, 22(g) and 22(h) of the Federal Reserve Act [21] (FRA). These sections of the FRA were made applicable to savings associations by provisions of FIRREA and by FDICIA. The OTS has substantially revised its regulations [22] to implement the statutory restrictions of sections 23A, 23B, 22(g) and 22(h) of the FRA.

The current statutory and regulatory structure thus eliminates the need for a separate statement of these restrictions in rules governing the organization of *de novo* institutions. Therefore, the proposed regulation deletes the requirements for the filing of plans for

[15] *See* FDIC Policy Statement, 57 FR 12822 (April 13, 1992).

[16] *See* 12 CFR 571.6(d)(3)(iii).

[17] 12 U.S.C.A. 1831o(e)(2)(C) (West Supp. 1994).

[18] 12 CFR 565.5.

[19] 39 FR 6696 (February 22, 1974).

[20] *See also OTS's Statement Concerning the Responsibilities of Directors and Officers of Insured Depository Institutions* (November 16, 1992).

[21] 12 U.S.C.A. 371c, 371c-1, 375 and 375b (West 1989 and Supp. 1994). *See also* 12 U.S.C.A. 1468 (West Supp. 1994).

[22] *See* 12 CFR 563.41, 563.42 and 563.43.

avoidance of conflicts of interest and usurpations of corporate opportunity.

*Standard Approval Conditions.* The proposed rule revises and codifies the standard approval conditions for *de novo* institutions. The OTS has generally imposed approval conditions in order to ensure compliance with its substantive regulations, to address unique supervisory concerns, and to impose subsequent oversight by the OTS regional offices. However, a number of these standard conditions, such as those imposing specific controls on insider and affiliate transactions, have become redundant or obsolete. For example, a previously imposed standard condition required the submission of extensive background material by controlling shareholders, directors and officers both prior to and after consummation of the transaction. Current statutory and policy requirements already adequately address this issue and a standard condition is not necessary.[23] However, the proposal retains a requirement that provides for the collection of information on the performance of management, which gives the OTS an additional supervisory tool for institutions without proven track records.

*Recodification of Requirements.* Under the proposed amendment, the requirements for creation of a *de novo* institution will be moved from part 571, Statement of Policy, to part 543, Incorporation, Organization, and Conversion of Federal Mutual Associations, and incorporated into part 552, Incorporation, Organization, and Conversion of Federal Stock Associations, by cross-reference to part 543. This recodification will make these provisions easier to locate, as they will be grouped with other federal savings association regulations rather than with policies affecting all savings associations. Recodifying these provisions as regulations should also minimize any confusion about their status as requirements, rather than only guidance.

## IV. Request for Comment

The OTS requests comments from interested parties on all aspects of this proposal. In addition, the OTS is specifically soliciting comment on whether or not there should be a deletion or revision of the current section 571.6(c), which contains requirements regarding the composition of the board of directors. This section was added in 1984.[24] It specifically provides, among other things, that a majority of the board of directors must be representative of the state in which the association is located, and that it must be diversified and composed of individuals with varied business and professional experience. The FDIC Policy Statement[25] and that of the Office of the Comptroller of the Currency (OCC) have similar requirements. The OCC Policy Statement states that local directors encourage ''community support.''[26] The OTS is requesting comment on whether the explicit requirements for a board of directors with diverse backgrounds and ties to the *de novo's* home state continue to serve a useful purpose. The OTS also is requesting comment on the factors currently in its Policy Statement that are to be considered in judging whether the board of directors meets these requirements.

## V. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

## VI. Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The reporting requirements in this proposed rule are found in 12 CFR 543.3. The information is needed by the OTS to reduce the risk of loss to newly-chartered institutions and the Savings Association Insurance Fund.

Estimated number of respondents: 10

Estimated average burden per respondent: 110 hours

Estimated annual frequency of responses: 1

Estimated total annual reporting burden: 1100 hours

## VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal does not impose additional burdens or requirements upon a small entity that files an application to become a *de novo* institution.

### List of Subjects

*12 CFR Part 543*

Reporting and recordkeeping requirements, Savings associations.

*12 CFR Part 552*

Reporting and recordkeeping requirements, Savings associations, Securities.

*12 CFR Part 571*

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby proposes to amend parts 543, 552, and 571, chapter V, title 12 of the Code of Federal Regulations, as set forth below:

## SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

## PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

### § 543.2 [Amended]

2. Section 543.2 is amended by removing and reserving paragraph (g)(2).

3. A new § 543.3 is added to read as follows:

### § 543.3 ''De Novo'' applications for a Federal savings association charter.

(a) *Definitions.* For purposes of this section, the terms ''*de novo* association'' and ''*de novo* applicant'' mean any savings and loan association, savings association, or savings bank that has submitted to the Office an application for permission to organize a Federal savings association, the business of which has not been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association for a period of three years.

(b) *Minimum initial capitalization.* (1) A *de novo* association must have not

[23] Section 32 of the FDIA, which was added by FIRREA, requires certain savings associations and thrift holding companies to notify the OTS and provide it with relevant information prior to adding or replacing directors or hiring senior executive officers if, among other things, the association has been chartered for less than two years. *See* 12 U.S.C.A. 1831i (West 1989); 58 FR 45421 (August 30, 1993) (OTS final rule implementing section 32); OTS Thrift Bulletin No. 45 (April 25, 1990).

[24] 49 FR 41243 (October 22, 1984).

[25] 57 FR 12825 (April 13, 1992).

[26] 12 CFR 5.20(d)(3)(iv)(B).

less than two million dollars in initial capital stock (stock institutions) or initial pledged savings or cash (mutual institutions), except as provided in paragraph (b)(2) of this section. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of a securities offering. In securities offerings for a *de novo* institution, all securities of a particular class in the initial offering shall be sold at the same price.

(2) On a case by case basis, the Director may, for good cause, approve a *de novo* applicant that has less than two million dollars in initial capital or may require an applicant to have more than two million dollars in initial capital.

(c) *Business and investment plans of newly-chartered associations.* (1) In order for the Office to make the determinations required under section 5(e) of the Home Owners' Loan Act, a *de novo* applicant for a Federal charter shall submit a business plan describing, for the first three years of operation, the major areas of operation, including, but not limited to:

(i) Lending, leasing and investment activity, including plans for meeting Qualified Thrift Lender requirements within the timeframes established in 12 CFR 563.50(d);

(ii) Deposit, savings and borrowing activity;

(iii) Interest-rate risk management;

(iv) Internal controls and procedures;

(v) A Community Reinvestment Act statement, pursuant to 12 CFR part 563e, and plans for meeting the credit needs of the proposed *de novo's* community (including low- and moderate- income neighborhoods);

(vi) Projected statement of condition; and

(vii) Projected statement of operations.

(2) The business plan shall provide for the continuation or succession of competent management subject to the approval of the Regional Director, and shall further provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director. The business plan shall demonstrate the proposed institution's ability to maintain required minimum regulatory capital under 12 CFR parts 565 and 567 for the duration of the plan.

(d) *Composition of the board of directors.* (1) A majority of a *de novo* association's board of directors must be representative of the state in which the savings association is located. The Office generally will consider a director to be representative of the state if such director resides, works or maintains a place of business in the state in which the savings association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) that incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company that does not have substantial independent economic substance, the foregoing standards will be applied to the holding company.

(e) *Management Officials.* (1) Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an application for permission to organize and subsequent to issuance of a Federal savings association charter to the association by the Office, any individual or group of individuals acting in concert, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this section, shall submit a Biographical and Financial Report to the Regional Director.

(2) Each new director of a *de novo* institution shall sign an ''Oath of Director for Savings Associations.'' The original of the document, executed, shall be submitted to the Regional Director.

(f) *Standard conditions.* The following are standard conditions that are imposed in any Office approval order relating to a *de novo* application:

(1) The *de novo* institution must receive all required regulatory approvals prior to the establishment of the *de novo* institution, with copies of all such approvals supplied to the appropriate Regional Office.

(2) The *de novo* institution must represent that there have been no substantial changes with respect to the *de novo* institution as disclosed in the information currently before the Office, including but not limited to changes in directors, shareholders, or in the business plan. The *de novo* institution must also represent that no additional information that would have a materially adverse bearing on any feature of the application has been brought to the attention of the applicant.

(3) The *de novo* institution shall provide for employment of senior executive officers who shall be charged with the full administrative and managerial responsibilities of the *de novo* institution under policies established by its board of directors. The performance of such individuals will be periodically reviewed and their continued employment will be subject to approval by the appropriate Regional Director, or his designee, for a period of three years.

(4) If applicable, the *de novo* institution shall submit to the appropriate Regional Office a list of stockholders of the *de novo* institution, and holders of any stock options and/or warrants, including each individual stockholder's name, address, amount of stock purchased, and principals of companies owning stock in the *de novo* institution, total purchase price, and any affiliation between stockholders.

(5) No later than 10 calendar days from the date of the consummation of the establishment or acquisition of the *de novo* institution, the *de novo* institution shall file, with the appropriate Regional Office, a certification by legal counsel stating the effective date(s) of its insurance and its opening, the exact number of shares of stock, if applicable, of the *de novo* institution, and that the establishment (or acquisition, if appropriate) of the *de novo* institution has been consummated in accordance with the provisions of all applicable laws and regulations, the application, and the Office's order.

(g) *Supervisory transactions.* This section does not apply to any application for a Federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes, or in connection with

applications for Federal charters for interim *de novo* associations chartered for the purpose of facilitating mergers or holding company reorganizations.

## PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

4. The authority citation for part 552 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

### § 552.2–1 [Amended]

5. Section 552.2–1 is amended by adding the phrase ''and § 543.3'' after the phrase ''of 543.2'' in paragraph (a), and by removing and reserving paragraph (b)(2).

## SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

## PART 571—STATEMENTS OF POLICY

6. The authority citation for part 571 continues to read as follows:

**Authority:** 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

### § 571.6 [Removed]

7. Section 571.6 is removed.

Dated: August 25, 1994.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**

*Acting Director.*

[FR Doc. 95–5315 Filed 3–3–95; 8:45 am]

BILLING CODE 6720–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 11

## Delegation of Authority

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

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The Administrator of the Federal Aviation Administration (FAA) is delegating the authority to deny a petition for rulemaking to the Office or Service that has jurisdiction over the specific parts of Federal Aviation Regulations (Title 14 of the Code of Federal Regulations) for which a petition is submitted. The Administrator will continue to be the decision point for petitions for reconsideration. This delegation will enable the FAA to respond more effectively to the large number of petitions for rulemaking submitted by the aviation community and the general public.

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

**FOR FURTHER INFORMATION CONTACT:** Joseph Hawkins, Office of Rulemaking (ARM–2), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9680.

**SUPPLEMENTARY INFORMATION:** The FAA has over 130 petitions for rulemaking on which it has been unable to take action primarily due to higher priorities and insufficient resources. Currently these petitions must be reviewed personally by the Administrator before action on them is complete. This involves significant participation of individuals at all levels of the agency.

In the case of a grant of a petition, personal involvement by the Administrator is appropriate, since the action of granting a petition results in the initiation of rulemaking proposing to amend a regulation. The authority to issue regulations has not been delegated below the level of the Administrator except for routine rulemaking, such as airworthiness directives and airspace actions. However, in a case where the responsible agency program office determines that a petition should be denied, it is unnecessary to require the personal involvement of the Administrator. For this reason, authority to issue the denial of a petition for rulemaking is being delegated to the head of the FAA office or service involved. This authority will be exercised with the concurrence of the Office of the Chief Counsel as to form and legality. In a case where a petitioner is not persuaded by the agency's rationale for denying the petition, the petitioner may request reconsideration of the denial by the Administrator.

Consistent with Vice President Gore's reinventing government initiatives and the National Performance Review, the Administrator is making this delegation to streamline the process for addressing petitions for rulemaking. It should achieve the following results: (1) Faster response to certain petitioners on the merits of their petitions; (2) a reduction in resources required for processing petitions by eliminating certain levels of review, unless such review becomes necessary due to special circumstances; (3) a reduction of the current backlog.

### Rulemaking

The FAA also will initiate rulemaking to amend 14 CFR part 11 (General Rule-Making Procedures) to reflect this delegation of authority. This delegation, however, is being made immediately in order to begin improving the process as quickly as possible.

### Delegation

Accordingly, the authority to deny a petition for rulemaking is hereby delegated to the head of the FAA office or service involved.

Issued in Washington, DC on February 14, 1995.

**David R. Hinson,**

*Administrator.*

[FR Doc. 95–5427 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 94–AAL–10]**

## Amendment to Class E Airspace; Cordova, AK

**AGENCY:** Federal Aviation Administration [FAA], DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment modifies the Class E airspace area at Cordova, AK, to accommodate Visual Flight Rules (VFR) traffic in the Cordova area, landing and departing from the Cordova Muni (CKU) airport located about 10 miles west of Merle K. ''Mudhole'' Smith (CDV) airport. Due to terrain limitations, VFR traffic must pass through the northern portion of the Cordova Class E surface area. When the Class E surface area is below basic VFR and Special Visual Flight Rule (SVFR) operations are being conducted, numerous delays are experienced. The area will be depicted on aeronautical charts to provide a reference for pilots operating under VFR.

**EFFECTIVE DATE:** 0901 UTC, May 25, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Durand, AAL–531, 222 West 7th Avenue #14, Anchorage, AK, 99513–7587; telephone: (907) 271–5898.

**SUPPLEMENTARY INFORMATION:**

### History

On December 20, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E surface area at Cordova, AK (60 FR 2044). The proposed action would provide required controlled airspace for Instrument Flight Rules (IFR) procedures at the Merle K. ''Mudhole'' Smith Airport and allow Visual Flight Rules (VFR) aircraft to proceed through the northern portion of the existing Cordova Class E surface area. The reduction in Class E surface area will segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be

depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for surface areas of an airport are published in paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Cordova, AK, by providing required controlled airspace for IFR procedures at the Merle K. ''Mudhole'' Smith Airport and allowing VFR aircraft to proceed through the northern portion of the current Cordova Class E surface area.

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

### List of Subjects in 14 CFR Part 71

Airspace incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 0854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

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

Paragraph 6002 Class E Airspace areas designated as a surface area for an airport.

* * * * *

AAL AK E2 Cordova, AK [Revised]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK

(Lat. 60°29′31″ N. Long. 145°28′39″ W)

Glacier River NDB

(Lat. 60°29′56″ N, long. 145°28′28″ W)

Within a 4.1-mile radius of the Merle K. (MUDHOLE) Smith Airport and within 2.1 miles each side of the 222° bearing from the Glacier River NDB extending from the 4.1-mile radius to 10 miles southwest of the airport within 2.2 miles each side of the 142° bearing from the NDB extending from the 4.1-mile radius to 10.4 miles southeast of the airport; excluding that airspace north of a line from lat. 60°32′48″ N, long. 145°34′06″ W; to lat. 60°31′00″ N, long. 145°20′00″ W.

* * * * *

Issued in Anchorage, AK, on February 21, 1995.

**Willis C. Nelson,**

*Manager, Air Traffic Division, Alaskan Region.*

[FR Doc. 95–5423 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 97

**[Docket No. 28104; Amdt. No. 1652]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 24, 1995.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 25, 1995*

Ashland, KY, Ashland-Boyd County, VOR or GPS RWY 10, Amdt 10
Ashland, KY, Ashland-Boyd County, SDF RWY 10, Amdt 6
Gruver, TX, Gruver Muni, VOR/DME or GPS–A, Amdt 1, CANCELLED
Gruver, TX, Gruver Muni, VOR/DME or GPS–B, Orig

** * * Effective April 27, 1995*

Iowa City, IA, Iowa City Muni, GPS RWY 30, Orig
Marysville, KS, Marysville Muni, NDB or GPS RWY 33, Amdt 4
Oakley, KS, Oakley Muni, NDB or GPS RWY 34, Amdt 2
Baltimore, MD, Baltimore-Washington Intl, VOR or GPS RWY 10, Amdt 15
Hagerstown, MD, Washington County Regional, ILS RWY 27, Amdt 6
Chickasha, OK, Chickasha Muni, VOR/DME RNAV or GPS RWY 35, Amdt 1
Conway, SC, Conway-Horry County, VOR/DME–B, Amdt 4
Baytown, TX, RWJ Airpark, VOR/DME or GPS RWY 32, Amdt 4
Baytown, TX, RWJ Airpark, VOR/DME RNAV or GPS RWY 26, Amdt 1
Spokane, WA, Felts Field, NDB–A, Amdt 1, CANCELLED

** * * Effective March 30, 1995*

Colorado City, AZ, Colorado City Muni, NDB–A, Orig
Oroville, CA, Oroville Muni, VOR–A, Amdt 5
Oroville, CA, Oroville Muni, NDB or GPS RWY 1, Amdt 2
San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Amdt 4, CANCELLED
San Francisco, CA, San Francisco Intl, BAY ILS/DME RWY 28L, Amdt 1
Lamar, CO, Lamar Muni, VOR/DME RWY 36, Orig
Mount Sterling, KY, Mt Sterling-Montgomery County, NDB RWY 03, Amdt 1
Mount Sterling, KY, Mt Sterling-Montgomery County, NDB RWY 21, Amdt 1
Oakdale, LA, Allen Parish, NDB RWY 35, Orig
Baltimore, MD, Baltimore, Washington Intl, ILS RWY 28, Amdt 8
Newark, NJ, Newark Intl, ILS RWY 11, Orig
Fargo, ND, Hector International, RADAR–1, Amdt 9
Jackson, OH, James A. Rhodes, VOR/DME or GPS–A, Orig
Jackson, OH, James A. Rhodes, VOR/DME or GPS–A, Amdt 2, CANCELLED
Versailles, OH, Darke County, NDB RWY 27, Orig
Versailles, OH, Darke County, NDB or GPS RWY 9, Amdt 7, CANCELLED
North Bend, OR, North Bend Muni, MLS RWY 22, Orig
Lebanon, TN, Lebanon Muni, NDB RWY 18, Amdt 3, CANCELLED
Saratoga, WY, Shively Field, NDB–A, Orig

** * * Effective Upon Publication*

Jacksonville, FL, Jacksonville Intl, LOC RWY 25, Amdt 8
Warrensburg, MO, Skyhaven, VOR/DME or GPS–A, Amdt 1.

**Note:** The FAA published an Amendment in Docket No. 28055, Amdt. No. 1644 to Part 97 of the Federal Aviation Regulations (Vol. 60 FR No. 19 Page 5573; dated Monday, Jan. 30, 1995) under Section 97.23 effective 30 MAR 95, which is hereby amended as follows:

Prestonburg, KY, Big Sandy Regional, VOR/DME–A, Amdt 1 should read: VOR/DME or GPS–A, Amdt 1.

[FR Doc. 95–5424 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 97

**[Docket No. 28105; Amdt. No. 1653]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements.

These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorpration by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

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

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on February 24, 1995.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

| FDC Date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 01/24/95 | WI | Madison | Dane County Regional-Truax Filed | 5/0301 | VOR OR TACAN OR GPS RWY 31 AMDT 24... |
| 01/30/95 | FL | Melbourne | Melbourne Intl | 5/0402 | LOC BC RWY 27L AMDT 8... |
| 02/09/95 | CA | Los Angeles | Los Angeles Intl | 5/0633 | ILS RWY 24L AMDT 21... |
| 02/09/95 | CA | Los Angeles | Los Angeles Intl | 5/0634 | ILS RWY 7L AMDT 3... |
| 02/09/95 | GA | Waycross | Waycross-Ware County | 5/0631 | VOR–A AMDT 7... |
| 02/09/95 | GA | Waycross | Waycross-Ware County | 5/0632 | RNAV RWY 18 AMDT 4... |
| 02/10/95 | CA | Firebaugh | Firebaugh | 5/0662 | VOR/DME OR GPS–A, AMDT 2... |
| 02/10/95 | CA | Los Banos | Los Banos Muni | 5/0658 | VOR/DME OR GPS RWY 14, AMDT 3... |
| 02/10/95 | CA | Los Banos | Los Banos Muni | 5/0659 | VOR/DME OR GPS RWY 32, AMDT 4... |
| 02/10/95 | CA | Modesto | Modesto City-County-Harry Sham Field. | 5/0663 | NDB RWY 28R, AMDT 7A... |
| 02/10/95 | CA | Oakdale | Oakdale | 5/0661 | VOR OR GPS RWY 10, AMDT 5A... |
| 02/10/95 | FL | Jacksonville | Craig Muni | 5/0670 | ILS RWY 32 AMDT 2C... |
| 02/10/95 | TN | Tullahoma | Tullahoma Regional Airport/WM Northern Field. | 5/0655 | VOR OR GPS–A AMDT 3... |
| 02/14/95 | AK | Juneau | Juneau Intl | 5/0731 | LDA–1, RWY 8, AMDT 10... |
| 02/14/95 | GA | Moultrie | Moultrie Muni | 5/0722 | VOR OR GPS RWY 22, AMDT 11A... |
| 02/16/95 | FL | Melbourne | Melbourne Intl | 5/0782 | VOR OR GPS RWY 27L, AMDT 11... |
| 02/21/95 | FL | Fort Myers | Page Field | 5/0821 | VOR OR GPS RWY 13, ORIG... |
| 02/21/95 | FL | Orlando | Orlando Intl | 5/0822 | ILS RWY 35, AMDT 2... |

[FR Doc. 95–5426 Filed 3–3–95; 8:45 am]
BILLING CODE 4910–13–M

## Coast Guard

## 33 CFR Part 165

**[CGD13–95–002]**

## Safety Zone Regulation; Bremerton, Washington, to Queets, Washington

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a moving safety zone 300 yards around the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while they are in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of latitude 47°32′N, Queets, Washington. The zone is needed to protect the tugs STACEY FOSS and RICHARD FOSS, and the barge NESTUCCA, and other persons, facilities, and vessels from safety hazards associated with onlookers and others who may wish to view the barge at close range. Entry into this zone is prohibited unless authorized by the Captain of the Port.

**EFFECTIVE DATES:** This regulation becomes effective on March 22, 1995 at 5 a.m. (PDT). It terminates when the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA are south of Latitude 47°32′N, Queets, Washington, at 1 p.m. (PDT) on March 23, 1995, unless sooner terminated by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** LTJG K. Paquette, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA and other vessels that may transit the area. Details were not available 30 days prior to the event, thus, there were not sufficient time to publish proposed rules in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures would be impracticable.

### Drafting Information

The drafters of this regulation are LTJG K. Paquette, project officer for the Captain of the Port, and LCDR J. Odell, project attorney, Thirteenth Coast Guard District Legal Office.

### Discussion of Regulation

The event requiring this regulation will begin on March 22, 1995 at 5 a.m. (PDT). In response to a request from the U.S. Navy, the Coast Guard is establishing a 300 yard moving safety zone around the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while these vessels are in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of Latitude 47°32′N, Queets, Washington at 1 p.m. (PDT) on March 23, 1995. This transit may result in a large number of vessels congregating near or in the path of the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA. This safety zone is needed due to the limited maneuverability of the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA and the need to ensure the safety of the mariners who may attempt to approach the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA during their transit, as well as other vessels in the immediate vicinity. This moving safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of he Port may be assisted by other federal agencies.

This regulation is issued pursuant to 33 USC 1231 as set out in the authority citation for all of part 165.

### Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of

potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

**Federalism**

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

**Environmental Assessment**

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

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

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

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

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

2. A new § 165.T13–002 is added to read as follows:

**§ 165.T13–002 Safety Zone: Puget Sound, Washington.**

(a) *Location.* The following area is a safety zone: All waters within 300 yards of the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of Latitude 47°32′ N., Queets, Washington, at 1 p.m. (PDT) on March 23, 1995.

(b) *Definitions.* A designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Puget Sound, to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(d) *Effective dates.* This regulation becomes effective on March 22, 1995 at 5 a.m. (PDT). It terminates when the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA are south of Latitude 47°32′ N., Queets, Washington, at 1 p.m. (PDT) on March 23, 1995, unless sooner terminated by the Captain of the Port.

Dated: February 10, 1995.

**R.K. Softye,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 95–5385 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–14–M

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## POSTAL RATE COMMISSION

## 39 CFR Part 3001

**[Docket No. RM91–1; Order No. 1043]**

## Rules of Practice and Procedure

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is publishing final rules amending its rules of practice adopted in Order No. 1043, issued February 17, 1995. The rules are based on revisions submitted as a proposed settlement of issues in Docket RM91–1, a rulemaking addressing general improvements in the Commission's rules of practice. The proposed revisions were published in the **Federal Register** (59 FR 8576) and comments have been received and considered. The differences between the rules as proposed and as adopted reflect conforming changes, editorial improvements, or clarification of intent.

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

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, Legal Advisor (202) 789–6820.

**SUPPLEMENTARY INFORMATION:** Two settlement agreements involving proposed improvements to the Commission's rules of practice were presented to the Commission in this docket. In response to the settlement coordinator's motion transmitting these agreements, the Commission incorporated the text of both agreements in a notice of proposed rulemaking, and requested comments. See 59 FR 8576, February 23, 1994. One involved a number of traditional, or standard, aspects of these rules, such as service and production specifications. This final rule adopts, with minor adjustments, revisions to the rules of practice contained in that proposal. The other proposed that participants be required to file certain documents in electronic form. Opposition to this settlement existed, and a new docket will shortly be established to further explore potential solutions to problems in this area.

The Commission received five comments. Four commenters expressed general support for the proposed revisions, but singled out one or more specific changes for additional discussion. One commenter expressed no opinion on the rules as whole, but sought clarification of one proposed change.

The Commission's evaluation of the settlement agreements and participants' comments leads to the publication of final rules that differ in several respects from the proposed rules. The main differences entail: the deletion of a proposed requirement related to filing documents in electronic form; the express exclusion of answers to interrogatories (and compelled answers) from the ''special request'' service practice otherwise applicable to discovery-related documents; removal of language restricting transcript corrections of Commission hearings to oral material; and clarification of minimum typeface size. Other differences reflect conforming changes and editorial improvements. A review of the rules and related comments follows.

**Production Requirements (Rule 10(a)): Terminology and Formatting Instructions**

Existing rule 10(a) sets forth specifications for production and preparation of documents filed with the Commission. The revision updates these requirements to reflect modern office technology and practice. For example, the final rule replaces the term ''typewritten,'' which currently appears as the title of the subsection and in the first sentence, with the term ''production'' or ''produced,'' as appropriate. In addition, the final rule increases the amount of space available for text by easing longstanding margin and line-spacing restrictions. It also replaces the existing requirement that text be double spaced with language allowing spacing of not less than one

and one-half lines. The former reference to ''type no smaller than elite'' is supplemented with a restriction against typeface sizes smaller than 12 points.

The latter change responds to one commenter's request for clarification of the proposed change regarding minimum allowable typeface size. This commenter, David Popkin, notes that point size, which the proposed rule adopts as the new standard, is inappropriate because points represent letter height, not characters per inch. Mr. Popkin raises the possibility that in adopting new terminology, the proposed rule inadvertently imposes stiffer restrictions on typeface size than currently exist. If so, the imposition of these restrictions would be contrary to the thrust of other proposals, which generally provide participants with more, rather than less, flexibility. The Commission's resolution of this issue is influenced by two considerations. One is the absence of any affirmative indication that the settlement signatories intended to impose more stringent restrictions on type size than currently exist. The other is the assumption that the signatories wanted to reflect the emergence of word processing equipment, which often includes software containing proportional typefaces expressed in characters per inch. The Commission views these as complementary, rather than competing, interests that can be reconciled with a minor revision. Accordingly, the rule as adopted retains the existing reference to elite type, but adds language recognizing the growing use of typefaces expressed in characters per inch or points.

**Action on Proposed Rule Requiring Documents To Be Filed in Electronic Form (Rule 10(d)) Deferred**

The proposal concerning electronic filing was agreed to by some, but not all, of the participants in the underlying rulemaking proceeding. The Postal Service, which did not support the proposal, reiterated its opposition to this change during the comment period. It asserted that it had encountered difficulty in generating diskette versions of its Docket No. R94–1 testimony and raised concerns about the potential for administrative problems. The Service further stated its conviction that this rule would not enhance efficiency or ease the burden on participants in the absence of uniform standards and an acceptable method of authentication. The Newspaper Association of America conditioned its support of the electronic filing provision on the Service's willingness to comply with it. The Office of the Consumer Advocate (OCA), which was a signatory to the non-unanimous settlement on electronic filing, reiterated its support for adoption of the rule as proposed but also formally requested that publication of the electronic filing rule be followed by notice of the Commission's interest in requiring that extensive database information be provided on CD–ROM media.

The Commission believes that the benefits of filing documents in electronic form are substantial. However, the Commission's review of the proposed rule and the record that has been developed in the underlying docket indicate that important questions about the scope, intent and adequacy of the rule as proposed remain unanswered. Moreover, the success of this type of change depends heavily on the cooperation of the Postal Service and other active participants. The Service's opposition leads the Commission to defer action on the proposed rule pending an opportunity for a more focused discussion. This discussion could include consideration of a requirement addressing the filing of extensive database information on CD–ROM, as suggested by the OCA. Accordingly, the Commission plans to publish an advance notice of proposed rulemaking to further explore this topic.

**Service Requirements Related to Discovery Requests (Rule 12(b) and Rules 25 Through 27)**

Existing rule 12(b), which addresses service by parties, generally requires that all documents be served upon all participants. This requirement has the potential to impose a burden on participants. In the interest of easing the service burden, the proposed settlement provision carved out an exception to rule 12(b)'s blanket service rule for discovery requests pursuant to rules 25 (interrogatories), 26 (requests for production of documents) and 27 (requests for admissions). It also added the direction that ''Special requests for service by other participants shall be honored'' and a sentence providing that special requests may be served upon participants conducting discovery and was to identify the witness(es) involved.

The preamble in the notice of proposed rulemaking acknowledged that a settlement conference participant had questioned whether the proposed revision accurately reflected the position of the conferees, as the terms applicable to service of answers appear to differ from those applicable to service of discovery requests and objections thereto. This participant's understanding was that the conferees intended for the ''special request'' provision to apply across-the-board. In recognition of this comment, the Commission indicated that in the absence of opposition, it would make appropriate changes reflecting a uniform service requirement.

However, another conferee has submitted a comment objecting to applying the new ''special request'' requirement to the service of discovery answers. This commenter apparently supports retention of rule 12(b)'s requirement of ''automatic'' service upon all participants for these filings. The commenter expresses no opposition to the ''special request'' practice for being served with discovery requests or objections.

This system of limited service of discovery requests and objections was followed in the most recent omnibus rate case, Docket R94–1. While some parties chose to serve documents even when no special request had been received, this new system allowed interested intervenors to reduce the cost of participation if they wished to do so. The Commission believes that formalizing the practice of limited service of discovery requests and objections can considerably reduce the burden of participation in Commission proceedings. Given that participants' interest in answers to interrogatories may differ from their interest in the initial questions or objections thereto, and the Commission's indication that it would honor objections to across-the-board application of the service requirement, the rule as adopted does not apply to the service of answers to interrogatories (or compelled answers). Instead, answers to interrogatories will be subject to the general service requirement. By extension, service of compelled answers and supplemental answers should also follow the general rule.

**Grace Period for Filing Signature Pages (Rule 25(b))**

Existing rule 25(b) requires that answers to interrogatories be signed by the person responding to them. The proposed rule allows a 10-day grace period for filing signature pages if the witness involved is not available to sign the answers when filed. The terms of the rule recognize an exception to the general service requirements by providing that signature pages filed under this circumstance need be served only on the Commission, and not on participants. This provision was part of the unopposed settlement, and it generated no opposition during the recent comment period. The Commission agrees that this change

would be beneficial, and adopts the change as proposed.

**Responsibilities of Limited Participants (Rule 20a(c))**

Existing rule 20a(c) provides that limited participators are not required to respond to discovery requests. The final rule qualifies this exception by requiring limited participators to respond to discovery requests when those requests are directed specifically to testimony limited participators have submitted. This provision was part of the unopposed settlement, submitted by the OCA, and generated no opposition during the most recent comment period. Accordingly, the rule is adopted as proposed.

**Transcript Corrections (Rule 30(i))**

Existing rules do not explicitly address the scope of transcript corrections. The change proposed in the settlement agreement, as a new subsection (i) in rule 30, specifies that transcript corrections should be limited to corrections of material substantive error in the transcription of oral statements made at the hearing. The Commission agrees that clarification of the informal practice that has developed is useful, and welcomes this change. However, as official reporters sometimes transcribe written material presented at hearings as well as oral statements, the Commission believes it would be preferable to eliminate the restriction to ''oral statements.'' With this modification, the rule is adopted as proposed.

**Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Commission certifies that this rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Postal Service.

For reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

2. Section 3001.10 is amended by revising paragraph (a) to read as follows:

**§ 3001.10 Form and number of copies of documents.**

(a) *Production.* If not printed, documents filed with the Commission shall be produced on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than ten pages. The text shall be not less than one and one-half spaced except that footnotes and quotations may be single spaced. Any typeface not smaller than elite or a comparable size expressed in points or characters per inch may be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

* * * * *

3. Section 3001.12 is amended by revising paragraph (b) to read as follows:

**§ 3001.12 Service of documents.**

* * * * *

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.25 (a) and (c), 3001.26 (a) and (c), and 3001.27 (a) and (c). Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

4. Section 3001.20a is amended by revising paragraph (c) to read as follows:

**§ 3001.20a Limited participation by persons not parties.**

* * * * *

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under § 3001.25 through § 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

5. Section 3001.25 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

**§ 3001.25 Interrogatories for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve a copy upon the Postal Service. Special requests for service by other participants shall be honored.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. The answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to

sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory and the Postal Service. Special requests for service by other participants shall be honored.

(d) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

* * * * *

6. Section 3001.26 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 3001.26 Requests for production of documents or things for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to a request shall serve the objection on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request for production. Special requests for service by other participants shall be honored.

* * * * *

7. Section 3001.27 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 3001.27 Requests for admissions for purpose of discovery.**

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

* * * * *

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request. Special requests for service by other participants shall be honored.

* * * * *

8. Section 3001.30 is amended by adding paragraph (i) to read as follows:

**§ 3001.30 Hearings.**

* * * * *

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing.

Issued by the Commission on February 17, 1995.

**Margaret P. Crenshaw,**

*Secretary.*

[FR Doc. 95–5114 Filed 3–3–95; 8:45 am]

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## 39 CFR Part 3001

**[Docket No. RM95–1; Order No. 1042]**

## Rules of Practice and Procedure

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition filed by the United States Postal Service, the Postal Rate Commission initiated this rulemaking to consider re-enactment of special rules of practice and procedure applicable to Postal Service requests to change Express Mail rates in response to

market conditions. Interested persons were invited to comment. 59 FR 65985–65987 (December 22, 1994). After reviewing the comments submitted, the Commission has determined that the published rules should be re-enacted, subject to a five-year sunset provision.

**EFFECTIVE DATE:** These rules will become effective March 6, 1995 and ending March 6, 2000 if not re-enacted by the Commission after the provision of an opportunity for public comment.

**ADDRESSES:** Correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Washington, DC 20268–0001.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sharfman, Legal Advisor (telephone: (202) 789–6820).

**SUPPLEMENTARY INFORMATION:** On August 15, 1994, the United States Postal Service filed a petition for institution of a rulemaking to re-enact Commission rules that establish special procedures for considering Postal Service requests to change Express Mail rates in response to market conditions. These rules, codified at 39 CFR 3001.57 through 3001.57c, were adopted as the culmination of the Commission's Docket No. RM88–2 in August, 1989; at that time, the Commission included a five-year sunset provision in 39 CFR 3001.57(b). Order No. 836, 54 FR 33681 (August 16, 1989). Consequently, by their own terms the rules ceased to be effective in mid-August of 1994.

The Commission granted the Postal Service's petition and began this rulemaking on December 14, 1994. Order No. 1038; Notice of Proposed Rulemaking, 59 FR 65985–87 (December 22, 1994). In its Notice of Proposed Rulemaking, the Commission published the pre-existing rules, stated its preliminary agreement with the Postal Service's position that the Express Mail market response rules should be retained, and established January 23, 1995, as the due date for comments by interested parties. Id. at 65985.

Two sets of comments were submitted in response to the Notice of Proposed Rulemaking in this docket.[1] United Parcel Service (UPS), a competitor of the Postal Service in the expedited delivery market, opposes re-enactment of the rules because: (1) Circumstances have changed since their initial adoption in a manner that allegedly negates any possible justification for their continued existence; (2) the rules are unnecessary because other available Commission rules provide adequate avenues for expedited consideration of specific Postal Service rate requests; and (3) the rules allegedly are contrary to the letter and spirit of the Postal Reorganization Act, the Administrative Procedure Act, and fundamental considerations of due process. The Commission's Office of the Consumer Advocate (OCA) opposes re-enactment on similar grounds: that there is less demonstrable need for, and opportunity to use, the rules than was anticipated when they were adopted in Docket No. RM88–2; and that it would be more efficient to devise comprehensive rules of procedure applicable to any class of mail, in the context of the Commission's Procedural Streamlining Inquiry, Docket No. RM95–2. Because these comments raise a variety of issues, the latter will be grouped by category for consideration.

## I. Alleged Legal Defects

Commenter United Parcel Service argues that certain features of rules 57 through 57c violate pertinent portions of the Postal Reorganization Act, the Administrative Procedure Act, and applicable due process requirements. For the most part, these comments replicate earlier arguments considered and rejected during the course of the RM88–2 proceeding, and the Commission finds them equally unpersuasive now.

UPS suggests that by contemplating the recommendation of Express Mail rates near the level of estimated attributable costs, the market response rules could yield rates which fail to recover the portion of institutional costs ''reasonably assignable'' to Express Mail, in contravention of 39 U.S.C. 3622(b)(3). UPS Comments at 7–8. UPS also argues that the recommendation of such rates would produce an overall rate schedule that fails to satisfy the ''fair and equitable'' standard of § 3622(b)(1). Id. at 8–9. However, these criticisms overlook the special rationale on which the market response rules are premised, and the particular restrictions on the rates which the Postal Service can propose under the rules. The appropriate level of ''reasonably assignable'' costs is determined by reference to the non-cost factors in § 3622(b);[2] the Postal Service could invoke rules 57 through 57c only where one or more of the policies of the Act arguably applies with such force as to justify a minimal contribution to institutional costs.[3] Additionally, the rules establish two different protective rate floors which the Postal Service must observe in its requests. Under section 57b(b), the Service is forbidden to propose rates less than the *greater* of average per piece attributable costs: (1) As determined in the most recent omnibus rate case, or (2) as estimated for the most recent fiscal year for which information is available. Section 57b(b)(2) also prohibits proposal of a rate ''for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.'' The Commission retained these restrictions in the final rules adopted in Docket No. RM88–2, over the objections of the Postal Service, in order ''to eliminate the risk that new Express Mail rates would be a burden on other classes of mail[,]'' and to ensure ''that the relationships among the classes of mail—in terms of contribution to institutional costs—are disturbed as little as possible.'' Order No. 836 at 15, 13. Thus, the Commission has already considered and accommodated the concerns raised by UPS, and there is no reasonable basis for concern that re-enactment of the rules would degrade the Commission's sound application of the § 3622(b) (1) and (3) factors.

The Commission also rejects the claims of UPS that the market response rules constitute ''a clear license to engage in unfair competition with private sector enterprises, in violation of Section 3622(b)(4) [,]'' and that they ''violate the discrimination prohibition in Section 403(c) of the Act'' by establishing a preference for Express Mail users. UPS Comments at 9. During the course of the RM88–2 proceeding the Commission received comments from several parties—including the Bureau of Competition of the Federal Trade Commission—regarding the Postal Service's participation in the expedited parcel delivery market. On the basis of that record, the Commission concluded that there was no justification for:

> * * * any finding that the Postal Service is so restricting the ability of other firms to compete in the expedited delivery market through use of the Private Express Statutes that it should not be given even the potential

[1] Additionally, while no provision had been made for reply comments, Advertising Mail Marketing Association (AMMA) submitted reply comments on February 3, 1995, together with a motion for leave to file such comments. In order to avoid prejudice to other parties that may have been inclined to file replies, the Commission shall grant AMMA's motion only in part, and will consider its comments strictly as an expression of support for re-enactment of the pre-existing rules.

[2] *See* National Association of Greeting Card Publishers v. U.S. Postal Service, 462 U.S. 810, 834 (1983): ''The Rate Commission is to assign remaining costs on the basis of the other eight factors set forth by § 3622(b).''

[3] Section 57a(c) requires that every formal request under §§ 57 through 57c ''contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.''

to change its rate more quickly in response to developments in the market.

Notice of Proposed Rule, 54 FR 11404–11405 (March 20, 1989). The Commission also stated its resolve to ''take into account the effect on the market'' when recommending rates under the expedited rules. Id. No commenter in this docket claims that the Postal Service has engaged in anti-competitive conduct in the expedited delivery market in the interim.

As to the claim of preference in violation of § 403(c), the Commission concluded in RM88–2 that adoption of expedited procedural rules would not constitute ''undue or unreasonable'' discrimination because ''Express Mail is the only class for which evidence supporting such rules has been given.'' Id. at 11399. Lacking evidence of a need to change rates for other classes expeditiously in response to competition, and of the likely impact such rate changes would have on postal finances, the Commission found it unreasonable to reject the proposed rules for Express Mail. The Commission also alluded to the possibility of extending the applicability of those rules, ''[i]f it later appears that similar procedures might be suitable for another class. * * *'' Id. The Commission is in much the same posture in this docket, but with the significant difference that Docket No. RM95–2 has been initiated to consider ''potential mechanisms for expediting its proceedings conducted under 39 U.S.C. 3624(a),'' which includes rate change proceedings. *See* 59 FR 65987 (December 22, 1994). Consequently, the Commission's prior conclusion that the rules for Express Mail pose no undue preference problem is now reinforced by its contemporaneous docket to consider similar mechanisms for other types of requests.

The Commission also finds no merit in the arguments that the rules would operate in violation of the hearing requirements of the Administrative Procedure Act, or would trench upon the due process rights of intervenors. Contrary to those claims, the Postal Service would be required to sustain its burden as proponent under rules 57 through 57c, beginning with the data filing requirements laid down in § 3001.57a. If the Commission concludes that the Service's presentation poses one or more genuine issues of material fact, either at the suggestion of an intervenor or on its own motion, a formal hearing would be held. *See* § 57b(e)(5). Only in the event that *no* such issue was identified—an extremely rare occurrence in the Commission's institutional experience—would a hearing not be held. In the absence of any genuine issue of material fact, the Commission would be under no obligation to conduct a hearing.[4]

The discovery and hearing procedures established in rule 57b admittedly require prompt action by all parties involved, in furtherance of the declared purpose ''to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested parties.'' § 3001.57c. However, in fashioning these procedures in Docket No. RM88–2, the Commission devoted considerable effort to striking a workable balance between expedition and the due process rights of interested parties. In response to comments, the Commission rejected some of the expedited procedures proposed by the Postal Service and supplemented others. Notice of Proposed Rulemaking (Second Notice), 54 FR 11401–11403 (March 20, 1989); Notice of Proposed Rulemaking (Third Notice), 54 FR 25137–25139 (June 13, 1989). Nor did the Commission overlook the need for flexibility in administering the expedited procedural schedule. It stated: ''If any particular date causes difficulty, the Presiding Officer can grant an extension of time * * *. When the Commission reviews its experience with these rules, we will be prepared to judge whether any of the scheduled dates should be changed in the rules.'' Third Notice of Proposed Rulemaking, 54 FR 25139. Consequently, at this time the Commission finds no basis for concern that re-enactment of these carefully considered rules would jeopardize the due process rights of participants in proceedings under rules 57 through 57c.

## II. Institutional Issues

United Parcel Service also comments that re-enactment of the rules would be inappropriate because they allegedly pose a ''risk of seriously undermining Congress' carefully crafted division of authority between the Commission and the Postal Service.'' UPS Comments at 15. UPS suggests that the rules would improperly delegate the Commission's responsibility for determining attributable costs to the Postal Service; could be invoked to nullify the Commission's rate recommendations for Express Mail in omnibus rate decisions and introduce reduced rates that could be in effect for years; and would serve as ''a device for selectively deregulating postal ratemaking in the case of only one favored class of mail.'' Id. at 15–16. In the Commission's view, these comments mischaracterize the purpose and intended operation of the Express Mail market response rules.

As the source and repository of the raw data from which cost estimates are derived, the Postal Service necessarily provides the principal input to the process of determining attributable cost levels. The Commission's functions thereafter are to provide a forum in which interested parties can probe and challenge the Service's estimates; and to decide whether the Service's proposals are supported by substantial evidence and consistent with the Postal Reorganization Act's policies and factors. Rules 57 through 57c provide expedited procedures, but also preserve these essential functions. They do not allow the Commission to recommend Express Mail rates that are unsupported by credible cost evidence or otherwise inconsistent with statutory factors. *See* the rule for decision in § 3001.57c. They will not be allowed to become a substitute for scrutiny in omnibus rate cases, as the Commission clearly stated in Docket No. RM88–2. *See* Second Notice of Proposed Rulemaking, 54 FR 11403 (March 20, 1989). Therefore, in no meaningful sense can they be characterized as a vehicle for deregulating Express Mail rates.

## III. The Question of Need

Both United Parcel Service and the Office of the Consumer Advocate take the position that, because of the Postal Service's failure to invoke rules 57 through 57c during their initial five-year period of effectiveness, and changed circumstances in the expedited delivery market in that time, there is no demonstrable need for re-enacting the rules. On the basis of available information, the Commission believes that this conclusion may be incorrect, and at the very least is premature. While the expedited delivery market doubtless has changed in five years, the Postal Service appears to be correct in its characterization that, ''[t]he most important feature that distinguishes competitors is price.'' Postal Service Petition at 4; *see* PRC Op. R94–1, November 30, 1994, para. 5402. In this fiercely competitive market, it is possible that expeditious adjustments in Express Mail rates may be useful to sustain the viability of that service to meet future competitive exigencies.[5]

[4] *See* Costle v. Pacific Legal Foundation, 445 U.S. 198, 213–16 (1980).

[5] The Commission cannot agree with the contentions of UPS and OCA that the current modest contribution of Express Mail to the institutional costs of the Postal Service represents an ''irreducible minimum'' (OCA Comments at 4), leaving no room for operation of the market

Consequently, the Commission will re-enact rules 57 through 57c for an additional five-year period.[6]

## IV. Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that these rules will apply exclusively to the United States Postal Service in proceedings conducted by the Postal Rate Commission, and to parties who choose to participate in those proceedings. Therefore, it is certified that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* Because these rules will only apply to the Postal Service and other participants in Commission proceedings, it has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. Inasmuch as the rules impose information-gathering and reporting requirements exclusively upon the United States Postal Service for the purpose of conducting postal rate proceedings, they do not contain any information collection requirements as defined in the Paperwork Reduction Act [44 U.S.C. 3502(4)], and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

## List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662, 84 Stat. 759–62, 764, 90 Stat. 1303; [5 U.S.C. 553], 80 Stat. 383.

2. Sections 3001.57 through 3001.57c are added to subpart B to read as follows:

### § 3001.57 Market Response Rate Requests for Express Mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–11413 (March 20, 1989), 54 FR 25132–42 (June 13, 1989) and PRC Order No. 836.

(b) This section and §§ 3001.57a through 57c are to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the **Federal Register** which provides an appropriate opportunity for public comments.

### § 3001.57a Market Response Rate Requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) of this section shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extend practicable, the factors identified in rule 54(j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. The Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail

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response rules. In recommending a 119 percent coverage for Express Mail in the recent omnibus rate case—a target ''slightly lower than that proposed by the Postal Service''—the Commission neither stated nor suggested that this figure was an ''irreducible minimum.'' *See* PRC Op. R94–1, para. 4052. On the contrary, the finding that 119 percent is an acceptable coverage factor for Express Mail at this time suggests (all other things being equal) that market response rates nearer average estimated attributable costs would be *more* acceptable than if a higher coverage factor had been recommended in the last omnibus rate case.

[6] For the sake of clarity, section 57(b) of the re-enacted rules has been amended by deletion of the word ''initially'' from its first sentence.

revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) rates remain at their existing levels, and

(2) rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1)(i)–(iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) that the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) that the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

**§ 3001.57b Market Response Rate Requests—expedition of public notice and procedural schedule.**

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) the average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) the average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e) (1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its

recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

**§ 3001.57c Express Mail Market Response—rule for decision.**

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

Issued by the Commission on February 17, 1995.

**Margaret P. Crenshaw,**

*Secretary.*

[FR Doc. 95–5115 Filed 3–3–95; 8:45 am]

BILLING CODE 7710–FW–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 95–3–6638a; FRL–5159–9]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control 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 a rule from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The revised rule controls emissions of volatile organic compounds (VOCs) from in-situ combustion well vents. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate VOC emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of nonsubmittal for this rule 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 fnal rule is effective on May 5, 1995 unless adverse or critical comments are received by April 5, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

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

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

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, suite 200, Fresno, CA 93721.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, 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) 744–1200.

**SUPPLEMENTARY INFORMATION:**

### Applicability

The rule being approved into the California SIP is SJVUAPCD Rule 4407, In-Situ Combustion Well Vents. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

### Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County

APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because some of these areas were 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.[2] 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 districts' portions of the California SIP were 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)(C) of the CAA, Congress statutorily required nonattainment areas to submit reasonably available control technology (RACT) rules for all major sources of VOCs by November 15, 1992 (the RACT catch-up requirement).

On March 20, 1991, the SJVUAPCD was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

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. It requires such areas to adopt RACT rules pursuant to section 172(b) as interpreted in pre-amendment guidance.[3] The San Joaquin Valley Area is classified as serious[4]; therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.[5]

The State of California submitted many RACT rules for incorporation into its SIP on July 13, 1994, including the rule being acted on in this document. This document addresses EPA's direct-final action for SJVUAPCD Rule 4407, In-situ Combustion Well Vents. The SJVUAPCD adopted Rule 4407 on May 19, 1994. This submitted rule was found to be complete on July 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[6] and is being finalized for approval into the SIP.

Rule 4407 controls emissions of VOCs from crude oil production wells where production has been enhanced by the heat of combustion resulting from air injected into the oil reservoir. VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of the SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to the section 182(b)(2)(C) CAA requirement. The following is EPA's evaluation and final action for this rule.

## EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''catch-up'' their RACT rules. See section 182(b)(2). For some source categories, such as in-situ combustion well vents, EPA has not published a CTG. In such cases, the air pollution control agency may determine what controls are required to satisfy the RACT requirement by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls are considered. Additionally, for both CTG and non-CTG rules, the air pollution control agency may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD's submitted Rule 4407, In-Situ Combustion Well Vents, is a new rule which controls VOC emissions from well vents by requiring either the use of an emissions control device which reduces well vent emissions by 85%, or routing emissions to fuel burning equipment or a smokeless flare. Rule 4407 also requires leak inspection and repair, annual compliance testing of control systems, and recordkeeping for operations, inspections and maintenance.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. If this direct final action is not withdrawn, on May 5, 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 document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate

[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for the following counties: Kern, King, Madera, Merced, and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley 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).

[5] California 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 rule being acted on in this Notice of Direct Final Rulemaking was submitted in response to the EPA finding of failure to submit.

[6] 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).

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 May 5, 1995, unless, by April 5, 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 May 5, 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.

SIP approvals under sections 110 and 301(a) 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. 7410 (a)(2).

The Office of Management and Budget 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.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 8, 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]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(198)(i)(C) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(198) * * *

(i) * * *

(C) San Joaquin Valley Unified Air Pollution Control District

(*1*) Rule 4407, adopted on May 19, 1994.

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[FR Doc. 95–5342 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[MA–30–1–6846a; A–1–FRL–5158–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC RACT for Brittany Dyeing and Printing

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision consists of a reasonably available control technology (RACT) Plan Approval for controlling volatile organic compound (VOC) emissions from Brittany Dyeing and Printing Corporation of New Bedford, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken in accordance with the Clean Air Act.

**DATES:** This final rule is effective May 5, 1995, unless notice is received by April 5, 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 Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Arnold, (617) 565–3166.

**SUPPLEMENTARY INFORMATION:** On March 31, 1994, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a reasonably available control technology (RACT) Plan Approval for controlling volatile organic compound (VOC) emissions from Brittany Dyeing and Printing Corporation of New Bedford, Massachusetts.

### Background Information

On November 9, 1983 (48 FR 51480), EPA approved Massachusetts Regulation 310 CMR 7.18(17) ''Reasonably Available Control Technology,'' as part of the Commonwealth of Massachusetts 1982 ozone attainment plan. This regulation requires the Massachusetts Department of Environmental Protection to determine and impose RACT on all facilities with the potential to emit one hundred tons per year or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.[1]

### Summary of SIP Revision

On March 31, 1994, Massachusetts submitted a RACT Plan Approval for Brittany Dyeing and Printing. EPA has reviewed this Plan Approval against the

[1] On February 12, 1993, Massachusetts revised 310 CMR 7.18(17) to apply to 50 ton per year facilities pursuant to Section 182 of the Clean Air Act Amendments of 1990. This revised rule has not yet been approved into the Massachusetts SIP.

applicable statutory requirements and for consistency with EPA guidance. Massachusetts' Plan Approval and EPA's evaluation are detailed in a memorandum dated December 21, 1994, entitled ''Technical Support Document—Massachusetts—Brittany Dyeing and Printing Corporation.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. A summary of EPA's analysis is provided below.

Brittany has four 310 CMR 7.18(17) RACT applicable VOC emitting processes at its textile processing facility: Fabric printing, fabric finishing, fabric dyeing, and process cleaning. Brittany's total 1990 VOC emissions were 172.1 tons.

Brittany has significantly reduced its VOC emissions by reformulating its printing pastes and finish formulations. Fabric printing and fabric finishing are the main source of VOC emissions at Brittany. Together these processes account for 93.6 percent of the facility's total 1990 VOC emissions. Although there is no CTG document for the fabric printing and finishing operations at Brittany, a CTG does exist for graphic arts printing (Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography; EPA–450/2–78–033) which covers a printing process that is similar to the fabric printing and finishing operations at Brittany. This CTG recommends a 65 percent overall reduction in VOC emissions from packaging rotogravure and a 75 percent overall reduction for publication rotogravure when using add-on controls. Furthermore, EPA has determined that a 0.5 pounds of VOC per pound of solids emission limit constitutes RACT for flexographic and packaging rotogravure printing.

The DEP has determined that an emission limit of 0.5 pounds of VOC per pound of solids represents RACT for both the fabric printing and the fabric finishing processes at Brittany. These emissions limits, which are consistent with those imposed on facilities covered by the Graphic Arts printing CTG, are reasonable limits. The 0.5 pounds of VOC per pound of solids limits are also consistent with a previously approved RACT Plan for Duro Textile Printers of Fall River, Massachusetts (54 FR 46896).

DEP has also determined that an emissions limit of 0.5 pounds of VOC per pound of solids represents RACT for the fabric dyeing process at Brittany. One exception to this limit is allowed for Polyester Carrier. Once again, the 0.5 pounds of VOC per pound of solids limit appears reasonable. The exception for Polyester Carrier is also considered acceptable in light of the following: (1) Fabric dyeing is responsible for only 0.7 percent of the facility's total 1990 emissions; and (2) DEP is also imposing a 0.4 tons of VOC per year cap on emissions from this product.

Finally, cleaning activities account for 5 percent of Brittany's total 1990 VOC emissions. EPA has recently published guidance on emissions from process cleaning (Alternate Control Techniques Document—Industrial Cleaning Solvents; EPA–453/R–94–015). This document indicates that the establishment of a solvents accounting or tracking system whereby actual solvent usage is tracked (rather than tracking only the total quantity purchased) leads to a reduction in emissions from cleaning activities. DEP is requiring that Brittany keep a separate daily VOC emissions log for cleaning activities and is also imposing annual caps on VOC emissions from specific cleaning products.

Brittany's compliance with the RACT requirements outlined above will be determined by the VOC content of its print pastes, finish formulations and dyes, and by the amount of solvent used per day. Brittany is required to keep daily records documenting the use of all VOC containing material.

EPA's review of Massachusetts' SIP revision indicates that the requirements contained in Massachusetts Plan Approval No. 4P92012 represent RACT for Brittany. EPA is, therefore, approving the March 31, 1994 Massachusetts SIP revision.

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 May 5, 1995 unless, by April 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously 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 on May 5, 1995.

**Final Action**

EPA is approving Massachusetts' Plan Approval for Brittany Dyeing Printing Corporation which was submitted as a SIP revision on March 31, 1994. This Plan Approval imposes RACT on Brittany in order to reduce VOC emissions from this facility.

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 document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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 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. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 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, Ozone.

**Note:** Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 9, 1995.

**John P. DeVillars,**

*Regional Administrator, Region I.*

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 U.S.C. 7401–7671q.

## Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(104) to read as follows:

**§ 52.1120 Identification of plan.**

* * * * *

(c) * * *

(104) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on March 31, 1994.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated March 31, 1994 submitting a revision to the Massachusetts State Implementation Plan.

(B) Final Plan Approval No. 4P92012, dated and effective March 16, 1994 imposing reasonably available control technology on Brittany Dyeing and Finishing of New Bedford, Massachusetts.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citation 310 CMR 7.18(17) to read as follows:

**§ 52.1167 EPA-approved Massachusetts state regulations.**

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

| State citation | Title/subject | Date submitted by State | Date approved by EPA | Federal Register citation | 52.1120(c) | Comments/unapproved sections |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| 310 CMR 7.18(17) ..... | Reasonably Available Control Technology. | 3/31/94 | March 6, 1995 ..... | [Insert *FR* citation from published date]. | 104 | RACT for Brittany Dyeing and Finishing of New Bedford, MA. |
| * | * | * | * | * | * | * |

[FR Doc. 95–5350 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[TX–47–1–6705a; FRL–5161–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing Sulfur Dioxide in Harris County

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

**ACTION:** Direct final rule.

**SUMMARY:** This action approves a revision to the Texas State Implementation Plan (SIP) to include Agreed Orders limiting sulfur dioxide ($SO_2$) allowable emissions at certain nonpermitted facilities in Harris County, Texas. By approving these Agreed Orders into the Texas SIP, along with approving a modeling demonstration showing attainment for the $SO_2$ National Ambient Air Quality Standards (NAAQS) in Harris County, and acknowledging that Harris County has more than two years of quality assured $SO_2$ monitoring data showing no violations of the $SO_2$ NAAQS, the EPA will not, at this time, designate Harris County, Texas nonattainment for the $SO_2$ NAAQS.

**DATES:** This final rule is effective on May 5, 1995 unless adverse or critical comments are received by April 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant 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 twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch (6T–A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

**SUPPLEMENTARY INFORMATION:**

## Background

Four violations of the primary 24-hour $SO_2$ NAAQS of 365 ug/m$^3$ (0.14 parts per million) were recorded at a single monitoring site (Houston Regional Monitoring Network (HRM) monitoring site #3) located near the Houston Ship Channel in Harris County, Texas, during 1986, 1988, and 1990. The 24-hour $SO_2$ NAAQS only allows one exceedance of the 365 ug/m$^3$ standard per calendar year. Each additional exceedance is considered a violation of the NAAQS. Due to the monitoring violations and a modeling study conducted in 1987 by Science Applications International Corporation, under contract with the EPA Region 6, which predicted $SO_2$ NAAQS exceedances in a portion of Harris County, the EPA declared, in an FR document dated April 22, 1991 (56 FR 16274), that Harris County was under consideration as a potential new $SO_2$ nonattainment area.

In response to the recommended redesignation, Radian Corporation, which represented the HRM, worked with the Texas Natural Resource Conservation Commission (TNRCC) to obtain reductions in $SO_2$ allowable emissions from certain Houston industries. Radian then modeled the revised allowable $SO_2$ emission inventory to determine if the area would attain the $SO_2$ NAAQS. By achieving these emission reductions, making them federally enforceable, and executing an in-depth modeling study, HRM sought to demonstrate that Harris County was in attainment for $SO_2$, and could thus avoid being redesignated to nonattainment. The EPA agreed to defer its final decision regarding nonattainment for Harris County, and granted the TNRCC, HRM, and the involved Harris County industries time to complete the modeling analysis, and also allowed the TNRCC to put in place enforceable restrictions on the new $SO_2$ emission rates (i.e. through Agreed Orders).

## Analysis of State Submission

### *A. Procedural Background*

The Clean Air Act (the Act) requires states to observe certain procedural requirements in developing implementation plans for submission to the 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. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Texas held a public hearing on March 31, 1994, to entertain public comment on a proposed Texas SIP revision containing the following elements: (1) An example Agreed Order limiting $SO_2$ allowable emissions; (2) a modeling demonstration showing $SO_2$ NAAQS attainment for Harris County; and (3) supporting narrative information. Subsequent to the public hearing and consideration of hearing comments, the SIP revision, containing 13 Agreed Orders, was adopted by the State on June 29, 1994. The SIP revision was submitted by the Governor to the EPA by cover letter dated August 3, 1994.

The SIP revision package was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated September 20, 1994, was forwarded to the Governor finding the submittal complete and indicating the next steps to be taken in the review process.

### *B. Review of State SIP Revision*

The Texas SIP Revision for Harris County contained, as outlined above, modeling analyses demonstrating $SO_2$ NAAQS attainment for Harris County (3-hour, 24-hour, and annual), Agreed Orders limiting $SO_2$ allowable emissions at 13 nonpermitted companies in Harris County, and supporting narrative information. The modeling analyses used a revised allowable emission inventory obtained through an $SO_2$ emissions reduction plan involving many Houston industries. As a result of the reduction plan, about 94,000 tons per year of federally-enforceable $SO_2$ allowable emissions reductions were obtained in Harris County, thereby decreasing the original areawide $SO_2$ allowable emissions inventory from about 287,000 tons per year to about 193,000 tons per year.

A review of the worst case scenario modeling presented in the SIP showed no exceedances of the $SO_2$ NAAQS (i.e. no exceedances at any of the receptors in the modeling grid). The modeling protocol and procedures, approved by the EPA and consistent with the EPA's ''Guideline on Air Quality Models (Revised)'' (July, 1986), used the EPA's Industrial Source Complex Short Term 2 model (most current version at the time of modeling) and five years of meteorological data (1981–1985) from the Houston International Airport with Lake Charles, Louisiana upper air data. A value of 3.5 ug/m$^3$ was used as the 24-hour background value, based on an evaluation of background monitored values and the area source contribution to the total emission inventory. Further, no violations of the $SO_2$ NAAQS have occurred at any Harris County area monitoring site since calendar year 1990. It is important to note that an $SO_2$ violation is defined as more than one exceedance of the 3-hour or 24-hour $SO_2$ NAAQS, or an exceedance of the annual $SO_2$ NAAQS. Only one exceedance of the 24-hour $SO_2$ NAAQS, in 1991, has been recorded in Harris County since calendar year 1990. For $SO_2$ NAAQS attainment, at least 8 calendar quarters (2 years) of data with no violations of the NAAQS is required. For further details on the modeling analyses and monitoring data, please reference the Technical Support Document (TSD) and the State submittal located at the EPA Region 6 office listed above.

The Agreed Orders were reviewed for consistency with the EPA enforceability guidance (i.e., the September 23, 1987, memorandum from J. Craig Potter regarding SIP enforceability), and with40 CFR part 60. The provisions of the Agreed Orders clearly identify each subject company, which all contain unpermitted $SO_2$ sources. Each Order, effective June 29, 1994, also sets $SO_2$ maximum allowable emissions limits, and recordkeeping, reporting and compliance monitoring requirements, including continuous emission monitoring requirements. Six facilities requested approval of an equivalent method of monitoring $SO_2$ emissions: Crown Central Petroleum Corporation, Exxon Company USA, Lyondell Citgo Refining Company, LTD., Mobil Mining and Minerals Company (Mobil), Phibro Energy USA, Inc., and Shell Chemical/Oil. On June 28, 1994, the Executive Director of the TNRCC approved the alternate method requests. The EPA is also granting in this FR document approval for each of the alternative monitoring proposals. The equivalent monitoring method proposed by all of

the companies, except Mobil, was to use a continuous emission monitor (CEM) to measure the concentration of hydrogen sulfide in the fuel gas that is fed to the combustion units listed in Attachment A of the respective Orders. In addition, it was also proposed by all companies, except Mobil, to use the maximum fuel capacity of the combustion units listed in Attachment A of the respective Orders as part of the calculations to demonstrate compliance with the maximum allowable emission rates in the event there is no fuel feed meter on a combustion unit or in the event the fuel feed meter is out of operation or malfunctioning. Mobil requested approval of an alternative CEM quality assurance program, and an alternative monitoring method for a small emission point. For further details on the Agreed Orders, please reference the TSD and the State submittal located at the EPA Region 6 office listed above.

## Final Action

The EPA is approving a revision to the Texas SIP submitted by the Governor of Texas by cover letter dated August 3, 1994, in order to make federally enforceable Agreed Orders to limit $SO_2$ allowable emissions at 13 nonpermitted facilities in Harris County. By approving these Agreed Orders into the Texas SIP, along with approving the modeling demonstration showing attainment for the $SO_2$ NAAQS in Harris County, and acknowledging that Harris County has more than 2 years of quality assured $SO_2$ data showing no violations, EPA will not undertake the process to designate Harris County, Texas as nonattainment for the $SO_2$ NAAQS at this time.

The EPA has reviewed this revision to the Texas SIP and is approving the revision as submitted. 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. Thus, this action will be effective May 5, 1995 unless, by April 5, 1995, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing 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 May 5, 1995.

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.

## Miscellaneous

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.* vs. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

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 May 5, 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)).

## Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

**Note:** Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 14, 1995.

**William B. Hathaway,**

*Acting Regional Administrator.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(93) to read as follows:

### § 52.2270 Identification of plan.

* * * * *

(c) * * *

(93) A revision to the Texas State Implementation Plan (SIP) to include agreed orders limiting sulfur dioxide ($SO_2$) allowable emissions at certain nonpermitted facilities in Harris County, and to include a modeling demonstration showing attainment of the $SO_2$ National Ambient Air Quality Standards, was submitted by the Governor by cover letter dated August 3, 1994.

(i) Incorporation by reference.

(A) Texas Natural Resource Conservation Commission (TNRCC) Order No. 94–09, as adopted by the TNRCC on June 29, 1994.

(B) TNRCC Order No. 94–10 for Anchor Glass Container, as adopted by the TNRCC on June 29, 1994.

(C) TNRCC Order No. 94–11 for Crown Central Petroleum Corporation, as adopted by the TNRCC on June 29, 1994.

(D) TNRCC Order No. 94–12 for Elf Atochem North America, Inc., as adopted by the TNRCC on June 29, 1994.

(E) TNRCC Order No. 94–13 for Exxon Company USA, as adopted by the TNRCC on June 29, 1994.

(F) TNRCC Order No. 94–14 for ISK Biosciences Corporation, as adopted by the TNRCC on June 29, 1994.

(G) TNRCC Order No. 94–15 for Lyondell Citgo Refining Company, LTD., as adopted by the TNRCC on June 29, 1994.

(H) TNRCC Order No. 94–16 for Lyondell Petrochemical Company, as adopted by the TNRCC on June 29, 1994.

(I) TNRCC Order No. 94–17 for Merichem Company, as adopted by the TNRCC on June 29, 1994.

(J) TNRCC Order No. 94–18 for Mobil Mining and Minerals Company, as adopted by the TNRCC on June 29, 1994.

(K) TNRCC Order No. 94–19 for Phibro Energy USA, Inc., as adopted by the TNRCC on June 29, 1994.

(L) TNRCC Order No. 94–20 for Shell Chemical and Shell Oil, as adopted by the TNRCC on June 29, 1994.

(M) TNRCC Order No. 94–21 for Shell Oil Company, as adopted by the TNRCC on June 29, 1994.

(N) TNRCC Order No. 94–22 for Simpson Pasadena Paper Company, as adopted by the TNRCC on June 29, 1994.

(ii) Additional material.

(A) May 27, 1994, letter from Mr. Norman D. Radford, Jr. to the TNRCC and the EPA Region 6 requesting approval of an equivalent method of monitoring sulfur in fuel and an equivalent method of determining compliance.

(B) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Crown Central Petroleum Corporation, approving an alternate monitoring and compliance demonstration method.

(C) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Exxon Company USA, approving an alternate monitoring and compliance demonstration method.

(D) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Lyondell Citgo Refining Co., LTD., approving an alternate monitoring and compliance demonstration method.

(E) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Phibro Energy, USA, Inc., approving an alternate monitoring and compliance demonstration method.

(F) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Shell Oil Company, approving an alternate monitoring and compliance demonstration method.

(G) June 8, 1994, letter from Mr. S. E. Pierce, Mobil Mining and Minerals Company, to the TNRCC requesting approval of an alternative quality assurance program.

(H) June 28, 1994, letter from Anthony C. Grigsby, Executive Director, TNRCC, to Mobil Mining and Minerals Company, approving an alternative quality assurance program.

(I) August 3, 1994, narrative plan addressing the Harris County Agreed Orders for $SO_2$, including emission inventories and modeling analyses (i.e. the April 16, 1993, report entitled ''Evaluation of Potential 24-hour $SO_2$ Nonattainment Area in Harris County, Texas–Phase II'' and the June, 1994, addendum).

(J) TNRCC certification letter dated June 29, 1994, and signed by Gloria Vasquez, Chief Clerk, TNRCC.

[FR Doc. 95–5352 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–F

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## 40 CFR Part 70

**[WI001; FRL–5164–9]**

## Clean Air Act Final Interim Approval of the Operating Permits Program; Wisconsin

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

**ACTION:** Final interim approval.

**SUMMARY:** The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Wisconsin for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

**EFFECTIVE DATE:** April 5, 1995.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Beth Valenziano, Permits and Grants Section (AT–18J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2703.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

*A. Introduction*

Title V of the Clean Air Act (Act), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On October 19, 1994, EPA proposed interim approval of the operating permits program for the State of Wisconsin. See 59 FR 52743. The EPA received public comment from 7 organizations on the proposal and compiled a Technical Support Document (TSD) responding to the comments and briefly describing and clarifying aspects of the operating permits program. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the State of Wisconsin.

### II. Final Action and Implications

*A. Analysis of State Submission and Response to Public Comments*

The EPA received comments on a total of 14 topics from 7 organizations. The EPA's response to these comments is summarized in this section. Comments supporting EPA's proposal are not addressed in this notice; however, EPA's complete response to comments TSD is available in the official file at the Region 5 address noted in the **ADDRESSES** section above.

1. Indian Lands

The EPA proposed that interim approval of Wisconsin's operating permits program not extend to lands within the exterior boundaries of reservations of federally recognized Indian Tribes in the State of Wisconsin. The proposal indicated that the Wisconsin Department of Natural Resources (WDNR) had not demonstrated the legal authority to regulate sources on tribal lands. WDNR submitted several comments on this issue, which are summarized and addressed below.

*Comment:* ''[W]ho will be responsible for issuance of permits to sources on Indian reservations prior to promulgation of either a tribal operation permits program or the federal operation permits program under 40 CFR Part 71? We are not aware of any tribal programs being developed or implemented in Wisconsin, and the federal part 71 rules have not yet been formally proposed. We are concerned about the apparent lack of any regulatory authority over sources on Indian reservations until a federal or tribal program is promulgated.''

*Response:* At this time, EPA is not aware of any facility within the exterior boundaries of a reservation in the State of Wisconsin that requires a title V operating permit. Further, the Act

explicitly contemplates that Indian Tribes may develop and administer their own Clean Air Act programs in the same manner as States. Section 164(c) delegates to Indian governing bodies the authority to redesignate lands within the exterior boundaries of reservations of federally recognized Indian tribes for purposes of the Act's Prevention of Significant Deterioration of Air Quality (PSD) program. Section 301(d) of the Act delegates to EPA the authority to specify the provisions of the Act for which it is appropriate to treat Indian Tribes in the same manner as States. The EPA has issued proposed rules that would authorize Tribes to administer approved Act programs in the same manner as States for virtually all provisions of the Act, including title V operating permit programs. *See* 59 FR 43956 (Aug. 25, 1994).

The EPA has spelled out some of the steps it currently takes and plans to take to protect tribal air quality prior to issuance of final rules authorizing tribal Act programs and ensuing tribal program approvals. *See, e.g.,* 59 FR at 43960–43961. The EPA is also developing rules to be issued within the next few months that would provide for EPA implementation of title V permit programs on tribal lands in the interim period before tribal programs are approved.

*Comment:* ''[T]he State of Wisconsin believes that it has authority to permit sources within Indian reservations if the source may have a substantial off-reservation impact * * *. The State has jurisdiction to enforce its air permitting laws on the basis of common law principles laid down by the United States Supreme Court. Recent decisions of that Court have departed from the concept of inherent Indian sovereignty as a bar to State jurisdiction over Indians and leaned towards reliance on the principle of federal preemption. *Rice* v. *Rehner,* 463 U.S. 713 (1983); see also *McClanahan* v. *Arizona State Tax Commission,* 411 U.S. 164 (1973) * * *. Although the concept of tribal sovereignty is given less emphasis today, it continues to be relevant to a form of preemption analysis applicable to Indian law, which can be summarized as follows: State jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority. *New Mexico* v. *Mescalero Apache Tribe,* 462 U.S. 324, [ ] 334 (1983). Thus, the inquiry must be whether federal or Indian interests are interfered with by enforcement of the state's air permitting laws, and, if so, whether the State interests at stake are sufficient to justify the assertion of State authority. In *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987), the Court discusses the issue of whether State laws apply to on-reservation conduct of Indians. The Court describes the appropriate analysis, that being the balancing of state, federal, and tribal interests and the related notion of tribal sovereignty * * *. Where a State's interest in applying its law outweighs any competing federal or Indian interests at stake, and where the State's exercise of its jurisdiction is not incompatible with congressional goals of promoting Indian self-government, self-sufficiency and economic development, states may apply their laws unless such application is preempted by the law. *Cabazon,* 480 U.S. at 214–216. In the case of the title V permitting program, no express federal law preempts State jurisdiction on Indian reservations. While this could occur with delegation of state status to the tribes, it has not happened yet. Furthermore, no Tribe in Wisconsin has a comprehensive air management program similar to that of the State. Given this backdrop, the State's interests in protecting the health and welfare of its citizens must prevail.''

''* * * [T]he State of Wisconsin believes that EPA's assertion that the State has no permitting jurisdiction over non-Indians on Indian reservations is overly broad, especially where the lands are owned by non-Indians. It is the State of Wisconsin's position that activities by non-Indians on Indian reservations are subject to a case-by-case review to determine whether the tribe (the federal government) or the state has regulatory jurisdiction. In order to regulate non-Indians, the tribe must demonstrate its inherent authority on a case-by-case basis. *Montana* v. *US,* 450 US 544 [ ] (1981), *Brendale* v. *Confederated Tribes of Yakima Indian Nation,* 492 US 408 [ ] (1989) * * *. In addition, as noted above, there is no inherent bar to state jurisdiction over the on-reservation activities of non-Indians.''

*Response:* To obtain title V program approval a State must demonstrate that it has adequate authority to issue permits and assure compliance by all sources required to have permits under title V with each applicable requirement under the Act. See Act § 502(b)(5); 40 CFR 70.4(b)(3)(i). The authority must include:

> A legal opinion from the Attorney General from the State or the attorney for those State, local, or interstate air pollution control agencies that have independent counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific stat[ut]es, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority.

40 CFR 70.4(b)(3). Thus, the Act requires affected States to support their title V program submittals with a specific showing of adequate legal authority over all regulated sources, including sources located on lands within Indian reservations. For the reasons outlined below, EPA concludes that the information presented by WDNR has not adequately demonstrated authority to regulate title V sources located within the exterior boundaries of reservations of Federally recognized Tribes, including any non-Indian owned fee lands within reservation boundaries.

In *Washington Department of Ecology* v. *EPA,* 752 F.2d 1465, 1469 (9th Cir. 1985), the court upheld EPA's decision declining to approve the application of a state program submitted under the Resource Conservation and Recovery Act (RCRA) to Indian activities within Indian country, notwithstanding that ''RCRA does not directly address the problem of how to implement a hazardous waste management program on Indian reservations.'' The court reasoned that EPA's decision was within its reasonable discretion and was buttressed by ''well-settled principles of federal Indian law'':

> States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it. [citations omitted]. This rule derives in part from respect for the plenary authority of Congress in the area of Indian affairs. [citations omitted]. Accompanying the broad congressional power is the concomitant federal trust responsibility toward Indian tribes. [citations omitted]. That responsibility arose largely from the federal role as a guarantor of Indian rights against state encroachment. [citation omitted]. We must presume that Congress intended to exercise its power in a manner consistent with the federal trust obligation. [citation omitted].

*Washington Department of Ecology,* 752 F.2d at 1469–1470; *see also United States* v. *Mazurie,* 419 U.S. 544, 556 (1975) (the inherent sovereign authority of Indian Tribes extends ''over both their members and their territory''); *Montana* v. *United States,* 450 U.S. 544, 556–557 (1981) (Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe).

The cases cited by WDNR do not demonstrate that Wisconsin has authority to administer its title V operating permits program within the

exterior boundaries of Indian reservations. In *New Mexico* v. *Mescalero Apache Tribe,* 462 U.S. 324, 337–38, 340–41, 343–44 (1983), the Supreme Court held that the State of New Mexico's attempt to regulate the hunting activities of non-tribal members on a Tribe's reservation was preempted because federal law recognized the authority of the Tribe to regulate hunting and fishing and the State regulation of non-members would entangle and interfere with the federal promotion of tribal authority. In *California* v. *Cabazon Band of Mission Indians,* 107 S.Ct. 1083 (1987), the Court held that California and Riverside County could not assert jurisdiction over bingo and gambling activities conducted by Indians on Indian land, even though the primary customers for the activities were non-Indians. The Court found that neither Pub. L. No. 83–280 nor the Organized Crime Control Act of 1970 authorized the State or County to impose gambling laws or ordinances on the reservation. In *McClanahan* v. *Arizona State Tax Comm.,* 411 U.S. 164 (1973), the Supreme Court held that it was unlawful for the State of Arizona to impose an income tax on a reservation Indian whose income was derived from reservation sources. In three of the four Supreme Court cases cited by WDNR to support its regulation of Indian country based on preemption analysis, the Court held that state regulation was preempted.

In *Rice* v. *Rehner,* 463 U.S. 713 (1983) the Supreme Court reversed a lower court's decision that State regulation of liquor on a reservation was preempted by Federal law. The Court's decision was based on its conclusion that ''[i]n the area of liquor regulation, we find no 'congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development' '' (citation omitted) and that Congress authorized State regulation over Indian liquor transactions. *Rice,* 463 U.S. at 724, 726, 734–35. In notable contrast with liquor regulation and as elaborated below, the Act (and other environmental statutes) plainly provides for tribal and Federal programs to protect air quality within reservations. Further, as explained below, there is well-established Federal policy promoting collaborative tribal and Federal environmental management of reservations and treating Tribes, not States, as responsible for protection of the reservation environment.

WDNR cites two additional Supreme Court cases to support its comment that EPA has been overbroad in proposing to conclude that the State lacks authority over non-Indian owned lands within the exterior boundaries of an Indian reservation. WDNR comments that the determination of regulatory jurisdiction over such lands should be based on a specific case-by-case review.

The case law addressing a Tribe's authority over non-members on non-Indian owned fee lands within the exterior boundaries of a reservation must be viewed in light of the provisions of the Act providing for tribal and Federal protection of air quality within reservation boundaries and the reservationwide concerns presented by air pollution activities, discussed further below.

As noted, EPA's regulations implementing the title V program require specific evidence of legal authority. WDNR does not present Federal law, particularized facts, and a formal legal opinion that specifically and adequately support its broad claim of title V program jurisdiction over all reservations in Wisconsin. Adequate State authority is especially necessary in these circumstances where, as set out below, the Act and relevant Federal policies provide for Tribes and EPA to protect reservation air quality, Supreme Court case law recognizes inherent sovereign tribal authority to regulate activities on fee lands where the conduct may have a serious and substantial impact on tribal health or welfare, and EPA has proposed to interpret the Act tribal authority provisions as granting Tribes' authority over air pollution activities on fee lands within reservations.

For many years Congress has delegated to Indian governing bodies the authority to redesignate ''[l]ands within the exterior boundaries of reservations of federally recognized Indian tribes'' for the PSD program under the Act. *See* section 164(c) of the Act. In 1990, Congress broadly addressed tribal authority under the Act, adding sections 110(o) and 301(d) to the Act. Section 301(d)(2) of the Act authorizes EPA to issue regulations specifying those provisions of the Act for which it is appropriate ''to treat Indian Tribes as States.'' Further, it addresses the potential jurisdictional scope of tribal Act programs, authorizing EPA to treat Tribes in the same manner as States for ''the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction.'' Act § 301(d)(2)(B). In addition, section 110(o) provides that tribal implementation plans under the Act ''shall become applicable to all areas * * * located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.'' Section 302(r) of the Act defines ''Indian tribe'' to mean ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' Section 302(b) of the Act includes ''[a]n agency of an Indian tribe'' in the definition of ''air pollution control agency.'' *See also* sections 103 and 105 of the Act (authorizing Federal financial assistance to air pollution control agencies).

The EPA has proposed to interpret these and other provisions of the Act as granting Tribes—approved by EPA to administer Act programs in the same manner as States—authority over all air resources within the exterior boundaries of a reservation for such programs. The EPA has explained that ''[t]his grant of authority by Congress would enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation.'' 59 FR 43956, 43958–43960 (Aug. 25, 1994) (legal rationale).[1]

The Supreme Court has indicated that a Tribe ''may * * * retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the * * * health or welfare of the tribe.'' *Montana,* 450 U.S. at 566. A Tribe's inherent authority must be determined on a case-by-case basis, considering whether the conduct being regulated has a direct effect on the health or welfare of the Tribe substantial enough to support the Tribe's jurisdiction over non-Indians. *See Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation,* 492 U.S. 408 (1989).

Thus, EPA observed that even without the proposed grant of authority, Indian Tribes would very likely have inherent authority over all activities within reservation boundaries, including non-Indian owned activities on fee lands, that are subject to Act regulation. The high mobility of air pollutants, resulting area-wide effects and the seriousness of such impacts would all tend to support

[1] EPA's proposed interpretation was informed in part by the significant regulatory entanglements and inefficiencies that could result if tribes have reservationwide jurisdiction over Act Tribal implementation plans (TIPs), as plainly provided in section 110(o) of the Act, but States are conferred jurisdiction within reservation boundaries over non-TIP programs, such as title V. *See* 59 FR 43959; *see also New Mexico* v. *Mescalero Apache Tribe,* 462 U.S. at 340–41.

such inherent tribal authority. *See* 59 FR 43958, n. 5; *see also* 56 FR 64876 at 64877–64879 (Dec. 12, 1991).

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian ''self-government'' and (2) that it will work directly with tribal governments on a ''government-to-government'' basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign tribal governments must be fully respected. 59 FR 22,951 (May 4, 1994).

The EPA's tribal policies commit to certain principles, including the following:

> EPA recognizes tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.
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> * * * * *
>
> In keeping with the principal of Indian self-government, the Agency will view tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to tribal Governments to play this lead role for matters affecting reservation environments.

November 8, 1984 ''EPA Policy for the Administration of Environmental Programs on Indian Reservations''; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994; *see also Washington Department of Ecology,* 752 F.2d at 1471–72 & n. 5.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider tribal interests in its actions. *Nance* v. *EPA,* 645 F.2d 701, 710 (9th Cir.), *cert. denied, Crow Tribe of Indians* v. *EPA,* 454 U.S. 1081 (1981).

The EPA provides federal financial assistance and technical assistance to Tribes to support assessment and protection of reservation environments including air quality. Section 301(d)(4) of the Act expressly provides for EPA administration of Act programs where it is inappropriate or infeasible for Tribes. EPA has described its efforts and plans to protect reservation air quality. The EPA will fill gaps in air quality protection in the interim period before tribal Act programs are approved, as necessary to ensure that reservation air quality is adequately protected. *See* 59 FR 43960–61. The EPA will issue proposed rules within the next few months that will provide for EPA implementation of title V permit programs where Tribes lack approved programs.

Even where an environmental statute did not directly address management on reservations and Tribes themselves had not assumed authority for program management, the reviewing court upheld EPA's decision declining to approve a State program's application to Indian country and concluded:

> [T]he tribal interest in managing the reservation environment and the federal policy of encouraging tribes to assume or at least share in management responsibility are controlling.
>
> * * * * *
>
> It is enough that EPA remains free to carry out its policy of encouraging tribal self-government by consulting with the tribes over matters of hazardous waste management policy, such as the siting of waste disposal. * * * The 'backdrop' of tribal sovereignty, in light of federal policies encouraging Indian self-government, consequently supports EPA's interpretation of RCRA.

*Washington Dept. of Ecology,* 752 F.2d at 1427 (citation omitted).

Further, the State has failed to identify any compelling State interest that would justify broad assertion of State authority throughout Indian country. At this time, EPA is not aware of any facility within the exterior boundaries of an American Indian reservation in the State of Wisconsin that requires a title V operating permit. It is possible but entirely speculative that some future title V reservation sources may be located near State boundaries. As indicated, EPA has issued proposed rules that would authorize Tribes to administer EPA-approved title V programs and, in the interim, EPA is developing regulations that would authorize EPA to issue title V permits for affected sources where Tribes lack approved programs. In addition, the Act provides several mechanisms to address the potential transport of pollution off-reservation. *See, e.g.,* 59 FR 43964; sections 110(a)(2)(D) and 126 of the Act; section 164(e) of the Act; section 505 of the Act.

Based on the Clean Air Act and Federal Indian law and policies, EPA concludes that WDNR has not adequately supported the application of its title V program to reservations generally or to fee lands within reservation boundaries. *See also* 53 FR 43080 (Oct. 25, 1988) (EPA's decision declining to approve Washington's request to administer the Safe Drinking Water Act's Underground Injection Control Program to Indian lands).

Finally, EPA's decision to decline to approve application of the State's program to lands within the exterior boundaries of reservations of federally recognized Indian Tribes based on the limited information submitted by the State and the special issues and considerations associated with tribal lands is within the Agency's discretion. *See* Act section 502(d)(1) (EPA ''may'' approve a [state title V] program) & Act section 502(g) (EPA ''may'' by rule grant the [state title V] program interim approval); *compare Alabama Power Co.* v. *EPA,* No. 94–1170, slip op. at 11 (D.C. Cir. Nov. 29, 1994) (''the AEL provision's mandatory language * * * '[t]he permitting authority *shall* * * * authorize an emission limitation less stringent than the applicable limitation * * *.' (emphasis added) * * *''); *see also* 59 FR 43982 (''[a] State Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian Tribe'') (proposed 40 CFR 49.10).

*Comment*: ''[T]he proposed interim approval discusses both Indian reservations and tribal lands, with no clear distinction between the two. On page 4 of its proposed interim approval, EPA states: '* * * the proposed interim approval of Wisconsin's operating permits program will not extend to lands within the exterior boundaries of any Indian reservation in the State of Wisconsin.' However, it is our understanding that Indians may own lands outside of a reservation which may still be considered 'tribal lands'. Certain lands may be simply owned by tribal members, while other lands may be considered 'trust lands' (i.e. after approval by the U.S. Department of the Interior). We are uncertain what EPA's position is as to whether State jurisdiction extends to various lands owned by Indians, but located outside of reservation boundaries. Again, this determination should likely be made on a case-by-case basis, as the State of Wisconsin may have regulatory jurisdiction on these lands. We are concerned that if the state does not have jurisdiction over these lands, a 'checkerboard' pattern of regulation will develop, with no clear delineation of who has jurisdiction over air pollution sources. This can result in a non-uniform, confusing and ineffective air pollution regulatory system. We believe that this issue should be clarified in EPA's final interim approval. Our position is that the State of Wisconsin should be allowed to exercise its jurisdiction on these lands, which are

located outside of reservation boundaries.''

*Response*: As indicated, EPA is currently not aware of any title V source located on lands over which an Indian tribe has jurisdiction. Further, the State's comment does not identify any specific affected off-reservation sources. Without more information about specific circumstances, EPA cannot address the State's specific concern. In general, based on the information currently submitted to EPA by the State and largely for the reasons outlined in the preceding response, EPA's approval of Wisconsin's program would not extend to any sources located within Indian country, as defined at 18 U.S.C. 1151. The EPA will work with both the State and an affected tribal governments to evaluate any specific questions that are in fact presented.

2. Fee Adequacy

WDNR commented that the State's title V fees were developed to provide for adequate implementation of the minimum program requirements as they existed when the fees were developed. However, WDNR is concerned that these fees may not be sufficient to cover any extra requirements that may be added to the program, especially the section 114 enhanced compliance monitoring requirements and the section 112(r) emergency release requirements. WDNR stated that EPA must take into account the limited resources that States will have under the presumptive minimum fees established for the title V program in promulgating these regulations.

Although title V establishes a presumptive minimum cost model, it also requires that a State's fee schedule result in the collection and retention of revenues sufficient to cover permit program costs. See 40 CFR 70.9 as well as the guidance memorandum issued on August 4, 1993 entitled, ''Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards. This adequacy requirement ensures that title V programs are not and will not be underfunded, and obligates the States to update and adjust their fee schedules if they are not sufficient to fund the program costs. It may therefore be appropriate to adjust fees for program expenditure increases, such as the implementation of new applicable requirements for enhanced monitoring and emergency releases.

3. Acid Rain Fees

The EPA proposed that the approval of Wisconsin's fee schedule does not extend to Wisconsin's fee provisions for the collection of emissions fees from utilities with affected units under section 404 of the Act (s.144.399(2)(am), Wis. Stats., and s.NR 410.04(4), Wis. Adm. Code). 40 CFR 70.9(b)(4) provides that, for 1995 through 1999, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act. One commenter argued that the State fees are not directly charged on emissions from Phase I affected units, and therefore EPA should not be concerned about these fees, which would place Wisconsin's fee revenue collection slightly above the presumptive minimum cost established in part 70. Although the fees in question are not directly charged on emissions from Phase I affected units, they are charged to other units operated by a utility that owns or operates a Phase I affected source. In addition, the fee amount is equivalent to what would have been charged to the Phase I affected unit. In other words, the State program charges emissions fees to utilities with Phase I units in an amount equivalent to what would have been charged directly to the Phase I units. Because of this equivalency, EPA has determined that these fees cannot be considered title V fees.

4. Section 112(g) Implementation

The EPA received several comments regarding the proposed approval of Wisconsin's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Two commenters argued that Wisconsin should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commenters also argued that Wisconsin's preconstruction review program cannot serve as a means to implement section 112(g) because it was not designed for that purpose. One commenter also asserted that such a regulatory program is unconstitutional because the section 112(g) requirements are vague. In addition to the above comments, WDNR also commented that EPA should delay the implementation of section 112(g) until the Federal regulations are promulgated. WDNR anticipates that the implementation of section 112(g) without Federal regulations will be difficult and time consuming. However, WDNR also commented that it will implement the requirements of section 112(g) if a such a delay is not possible.

In its proposed interim approval of Wisconsin's part 70 program, EPA proposed to approve Wisconsin's preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Wisconsin must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Wisconsin's preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Wisconsin of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Further, EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Wisconsin currently lacks a program designed specifically to implement section 112(g), Wisconsin's

preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Wisconsin to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

Another consequence of the fact that Wisconsin lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in the section 112(g) rule. However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes during any transition period will be determined according to the final section 112(g) rule. The EPA would expect Wisconsin to be able to issue a preconstruction permit containing a case-by-case determination of MACT where necessary for purposes of section 112(g) even if review under its own preconstruction review program would not be triggered.

WDNR also commented that it will implement section 112(g) using its preconstruction review program, as EPA proposed on October 19, 1994. In addition, WDNR agreed that allowing Wisconsin 18 months from promulgation of Federal section 112(g) regulations to adopt its own regulations is sufficient.

One commenter incorporated by reference its comments on the proposed section 112(g) rule, and stated that the proposed rule has technical, legal, and constitutional defects that disqualify it as a valid or workable approach to section 112(g) implementation. The EPA believes the appropriate forum for pursuing objections to the legal validity of Federal regulations is by: (1) Submitting comments on a proposed rulemaking during the public comment period for that particular rulemaking, or (2) petitioning for review of the promulgated rule in the D.C. Circuit Court of Appeals. If the commenter has concerns with the final section 112(g) rule, the commenter will have the opportunity to pursue such action once the section 112(g) rule is promulgated.

Two commenters assumed that EPA would delegate the section 112(g) requirements to the State. The EPA wishes to clarify that the implementation of section 112(g) by the State, including case-by-case MACT determinations, is a requirement for approval of a State title V program. In other words, approval of the title V operating permits program confers on the State responsibility to implement section 112(g). Since the requirement to implement section 112(g) lies with the State in the first instance, there is no need for a delegation action apart from the title V program approval mechanism, except where the State seeks approval of a ''no less stringent'' program under 40 CFR part 63 subpart E. The EPA's approval of Wisconsin's program for delegation of section 112 standards as promulgated does not affect this responsibility to implement section 112(g).

5. Acid Rain Commitment

WDNR commented that there has been a delay in finalizing the State's acid rain regulations, and stated that Wisconsin will be requesting a short extension of its January 1, 1995 commitment date for submitting the acid rain program requirements. On December 19, 1994, EPA received WDNR's request to extend the acid rain submittal requirement to May 1, 1995. Because EPA does not expect this extension to affect WDNR's ability to timely implement the Phase II acid rain requirements, EPA approves WDNR's request.

6. Operational Flexibility Provisions

One commenter questioned EPA's authority to grant interim approval to a State that did not include operational flexibility provisions for ''new'' and ''modified'' sources (as defined by Wisconsin's program). The Act provides that EPA may grant interim approval to a program that substantially meets the requirements of title V, but is not fully approvable. The key term, ''substantially meets'', was not expressly defined in the statute. The part 70 regulations further address this issue, but in fairly broad terms, specifying eleven core program elements, including operational flexibility. Further guidance was issued in a memorandum on August 2, 1993 entitled, ''Interim Title V Program Approvals,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

40 CFR 70.4(d)(3)(viii) provides that the State program must allow certain changes to be made without requiring a permit revision if the changes are not title I modifications and do not exceed the emissions allowable under the permit, as provided in 40 CFR 70.4(b)(12). The preamble to the part 70 rulemaking further indicates that interim programs need to include only the ability to generally implement this section. See 57 FR 32271.

Each of the three approaches to operational flexibility set forth in 40 CFR 70.4(b)(12) describes an approach to implementing the language of the statutory mandate for operational flexibility. As explained in the August 2, 1993 memorandum, EPA interprets the regulation and preamble to mean that a State program would be eligible for interim approval if it provides for the implementation of any one of these three approaches for providing operational flexibility.

40 CFR 70.4(b)(12)(i) provides for section 502(b)(10) changes. Wisconsin's program includes this provision for ''existing'' sources, but not for ''new'' or ''modified'' sources. 40 CFR 70.4(b)(12)(ii) provides for an optional SIP trading program. Wisconsin's program does not currently include this provision, as no SIP trading program exists. 40 CFR 70.4(b)(12)(iii) provides for trading in the permitted facility for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Wisconsin's program includes this provision in s.NR 407.025(2)(a), Wis Adm. Code.

Wisconsin's program partially includes the first operational flexibility provision, and fully includes the third provision. Therefore, Wisconsin's operational flexibility provisions substantially meet the requirements of part 70, and the program is eligible for interim approval. However, EPA is clarifying in the final interim approval of Wisconsin's program that the operational flexibility deficiency is specific to the requirements of 40 CFR 70.4(b)(12)(i).

7. Denial of Permit Renewal Applications

Two commenters disagreed with EPA's proposal that, as a condition for full approval, Wisconsin's program must provide the authority to deny a renewal application for a source that is not in compliance. The commenters stated that part 70 does not mandate denial in such a circumstance, and Wisconsin should be able to retain its discretion to either approve or deny a permit renewal application for a source that is not in compliance.

The EPA agrees with the commenters that the denial of a permit renewal application for a source that is not in compliance is a discretionary action. As explained in the proposal, however, Wisconsin's program is lacking the underlying authority to deny a renewal application for a source that is not in compliance. As a condition for full approval, Wisconsin's program must include the provision that any permit noncompliance is grounds for denial of a permit renewal application. This

should not be interpreted to mean that Wisconsin has no discretion in determining its action on individual permit renewal applications for noncomplying sources.

8. Reopenings for Cause

Three commenters disagreed with EPA's proposal that, as a condition for full approval, Wisconsin's program must be revised to require permits to be reopened for cause under certain circumstances. Some commenters noted that the State reopening provisions are structured differently than the part 70 reopening provisions. The EPA proposed that reopening permits for cause must be mandatory for the following State provisions: ss.NR 407.14(1) (b), (c), (d), and (h), Wis. Adm. Code.

One commenter specifically opposed the mandatory reopening requirement for s.NR 407.14(1)(b), which provides for reopening to assure compliance with applicable requirements. This provision is equivalent to 40 CFR 70.7(f)(1)(iv), which requires reopening if the permitting authority determines that the permit must be revised to assure compliance with applicable requirements. Therefore, s.NR 407.14(1)(b) must be revised to require reopenings to assure compliance with applicable requirements. In addition, the same commenter referenced 40 CFR 70.7(f)(1)(i) requirements in the discussion of the State's s.NR 407.14(1)(b) requirements. The Federal provisions in (i) do not preclude the requirements in (iv).

The second provision, s.NR 407.14(1)(c), provides for reopening when there is a change in any applicable requirement, a new applicable requirement, or an additional applicable requirement. This State provision includes the provisions of 40 CFR 70.7(f)(1)(i), which requires reopening of a permit with a remaining term of 3 or more years when additional applicable requirements become applicable. This State provision also includes the provisions of 40 CFR 70.7(f)(1)(ii), which requires reopening when additional requirements become applicable to an affected source under the acid rain program. Therefore, s.NR 407.14(1)(c) must be revised to require reopenings, in accordance with the 3 year requirement under 40 CFR 70.7(f)(1)(i), or the acid rain requirements under 40 CFR 70.7(f)(1)(ii), as applicable. The EPA is clarifying in the final interim approval of Wisconsin's program that s.NR 407.14(1)(c) must be mandatory only to the extent required by 40 CFR 70.7(f)(1).

The third provision, s.NR 407.14(1)(d), provides for reopening when there is a change in any applicable emission limitation, ambient air quality standard, or ambient air quality increment that requires either a temporary or permanent reduction or elimination of the permitted emission. One commenter specifically opposed the mandatory reopening requirement for this State provision, stating that 40 CFR 70.7(f)(1) does not establish any requirement that a permit be reopened in response to a change in an applicable emission limitation or an air quality increment. The EPA disagrees with this comment, as the provisions outlined in s.NR 407.14(1)(d) include additional applicable requirements that a source may be subject to. Therefore, s.NR 407.14(1)(d) must be revised to require reopenings, in accordance with the 3 year requirement under 40 CFR 70.7(f)(1)(i), or the acid rain requirements under 40 CFR 70.7(f)(1)(ii), as applicable. However, EPA is clarifying in the final interim approval of Wisconsin's program that s.NR 407.14(1)(d) must be mandatory only to the extent required by 40 CFR 70.7(f)(1).

The fourth provision, s.NR 407.14(1)(h), provides for reopening when a permit contains a material mistake or inaccurate or unclear statements. Two commenters specifically opposed the mandatory reopening requirement for this State provision, stating that the Wisconsin provision is broader than the requirements of 40 CFR 70.7(f)(1)(iii). The EPA partially agrees with the commenters. 40 CFR 70.7(f)(1)(iii) requires permit reopening when the permitting authority determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit. The Wisconsin provision is broader because it includes ''unclear statements'' in a permit, in addition to material mistakes and inaccurate statements. The Wisconsin provision also does not limit the ''inaccurate statements'' provision to emissions standards or other terms or conditions of the permit. Therefore, EPA is clarifying in the final interim approval of Wisconsin's program that s.NR 407.14(1)(h) must be mandatory only to the extent required by 40 CFR 70.7(f)(1).

One commenter also objected to any revision that would require WDNR to mandatorily reopen any operating permit issued to a non-part 70 source. The EPA's interim approval of Wisconsin's title V operating permits program only applies to the State's title V program, and does not require the State to revise its operating permits program for non-part 70 sources.

9. Wisconsin Permitting Exemptions

Four commenters expressed concerns with EPA's proposal that, as a condition for full approval, some of Wisconsin's permitting exemptions must be revised to ensure that no part 70 sources are exempted from the requirement to obtain an operating permit.

All four commenters stated that the exemptions and associated recordkeeping and reporting requirements adequately limit potential to emit for the exempted sources. The EPA disagrees that the exemptions in question adequately limit potential to emit. As explained in the proposal, these Wisconsin permitting exemptions determine applicability based in part or totally on these sources' actual emissions or throughput, and the State's recordkeeping requirements do not provide a federally enforceable mechanism for limiting these sources' potential emissions to the actual emissions levels or throughput established in the exemptions. The recordkeeping provisions do not include specific emissions accounting requirements, and therefore do not ensure that the recordkeeping will be adequate to determine sources' actual emissions. In addition, the exemptions do not provide for any reporting requirements. Finally, mechanisms to limit potential to emit must be based on production or operation limits; emission rates do not adequately limit a source's potential to emit.

WDNR commented that, while it disagrees with EPA's concerns, WDNR commits to working with EPA to develop acceptable and practical mechanisms to deal with these source categories. The EPA agrees to work with WDNR to resolve this interim approval issue, and believes that it is important to develop mechanisms to avoid flooding the title V program with thousands of small sources that will never emit at part 70 applicability levels.

One commenter specifically objected to EPA's concern with ss.NR 407.03(1) (g) and (h). The commenter appears to be of the opinion that these exemptions are based on potential to emit because both exemptions include sources that ''*will emit* not more than 1,666 pounds of organic compounds per month''. The EPA disagrees with this interpretation. The Wisconsin provision provides an exemption for ''* * * operations which *emit or will emit* not more than 1,666 pounds of organic chemicals per month''. While this provision exempts

sources that ''will emit'' at this level, it also exempts sources that ''emit'' at this level. A source that has actual emissions of 1,666 pounds of organic chemicals per month may have the potential to emit at greater amounts, and therefore may be a part 70 source. In addition, the commenter noted that these Wisconsin exemptions are based on emissions measured prior to entering any emission control devices, while the determination of a source's potential to emit may be calculated by including air pollution control devices (if enforceable by the Administrator). Regardless of this distinction, EPA does not believe that the exemptions are based on potential to emit.

One commenter requested that the exemption in ss.NR 407.03(1)(t) be maintained to the extent possible. This provision provides an exemption for a combination of specified activities. The exemption is structured differently than the other exemptions for which EPA is granting interim approval, as it does not attempt to limit sources' potential to emit. Instead, this exemption allows combinations of activities to be grouped together, and certain combinations could result in emissions that would exempt part 70 sources from the permit program. Therefore, Wisconsin must revise this exemption to ensure that no part 70 sources are exempted. The State will need to determine to what extent this exemption can be retained and still ensure that no part 70 sources are eligible for the exemption.

10. Source Category Limited Interim Approval

Two commenters were supportive of EPA's proposed source category limited (SCL) interim approval; however, they were concerned that the State's current determination that it will not need additional time to issue initial permits would require those source categories to submit permit applications before the State has fully developed the program requirements for these sources. The EPA proposed SCL interim approval for Wisconsin for two separate circumstances: for new and modified sources that are not in compliance, and for sources belonging to the source categories covered by the permitting exemptions in ss.NR 407.03(1) (d), (g), (h), (o), (s), (sm), and (t).

The deficiency in Wisconsin's program with respect to new and modified sources that are not in compliance relates to the lack of State authority to issue permits to such sources. However, the State program does require these sources to submit permit applications in accordance with the State application schedule. Therefore, these sources are already covered by the State program, and are currently required to submit applications.

The deficiency in Wisconsin's program with respect to the permitting exemptions relates to the lack of State authority to require permits for certain part 70 sources. Therefore, the State may currently exempt some part 70 sources. Interim approval requires the State to correct this deficiency and submit a corrected program to EPA within 18 months after the effective date of the interim approval. Once the State corrects the deficiency, any part 70 sources which had been exempt will be required to obtain an operating permit in accordance with the requirements of the State program.

As stated in the proposal, Wisconsin has not requested additional time for issuing initial operating permits because the State intends to fix the SCL interim approval deficiencies in time to permit all sources within the 3 year phase-in period. In addition, previously exempted part 70 sources (if any exist) will be required to submit applications within one year of the interim approval effective date. If Wisconsin determines that it cannot meet these implementation requirements, SCL interim approval does provide that the completion of the initial permitting of the SCL sources could occur as late as 5 years after the granting of SCL interim approval (the 3 year phase in period plus the 2 year interim approval). To obtain this extension, Wisconsin would have to submit a request to EPA that includes compelling reasons why the additional time is needed. For additional discussion of this issue, including the specific requirements for a state's extension request, refer to the August 2, 1993 memorandum entitled, ''Interim Title V Program Approvals,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

11. Proposed Part 70 Rules

One commenter submitted comments it had previously filed on the proposed part 70 rule, and stated that it objected to interim approval of Wisconsin's operating permits program for the same reasons it had objected to the part 70 rule itself. The EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule brought in the D.C. Circuit Court of Appeals. The EPA notes that this commenter has filed such a petition. However, unless and until the part 70 rule is revised, EPA must evaluate programs according to the rule that is in effect.

12. Particulate Matter (PM) Issues

One commenter raised several issues regarding PM that were not relevant to EPA's proposed interim approval of Wisconsin's operating permits program. Therefore, EPA is not addressing these comments in the final action on Wisconsin's program.

*B. Final Action*

The EPA is promulgating interim approval of the operating permits program submitted by the State of Wisconsin on January 27, 1994. The scope of Wisconsin's part 70 program approved in this notice applies to all part 70 sources within Wisconsin, except for tribal lands in the manner described previously in this notice. The State must make the following changes to receive full approval:

1. Revise Wisconsin's operating permit program regulations to provide for criminal fines against any person who knowingly makes any false material statement, representation, or certification in a permit application. This provision is required by 40 CFR 70.11(a)(3)(iii).

2. Revise the following legislation and regulations to provide an application shield for ''new'' and ''modified sources'' (as defined by ss.144.30(20s) and (20e), Wis. Stats.): s.144.391(1)(b), Wis. Stats.; s.144.3925(7), Wis. Stats.; s.NR 407.06(2), Wis. Adm. Code; and s.NR 407.08, Wis. Adm. Code. Wisconsin's program does provide an application shield for ''existing sources'' (as defined by s.144.30(13). 40 CFR 70.7(b) requires that the application shield must apply to all part 70 sources which meet the application shield requirements.

3. Revise the following legislation and regulation to provide for operational flexibility, as required by 40 CFR 70.4(b)(12)(i), for ''new'' and ''modified sources'' (as defined by ss.144.30(20s) and (20e), Wis. Stats.): s.144.391(4m), Wis. Stats.; and s.NR 407.025, Wis. Adm. Code. Wisconsin's program does include this requirement for ''existing sources'' (as defined by s.144.30(13)). 40 CFR 70.4(b)(12)(i) is required to apply to all part 70 sources.

4. Revise the appropriate legislation and regulations to provide the authority to deny a renewal application for a source that is not in compliance. 40 CFR 70.6(a)(6)(i) requires that any permit noncompliance is grounds for denial of a permit renewal application. Section NR 407.09(1)(f)1., Wis. Adm. Code, states that the authority to deny a permit renewal application for noncompliance

is contingent upon the requirements in s.144.3925(6), Wis. Stats., which do not currently provide for a denial in such a circumstance. Appendix P of Wisconsin's operating permits program submittal includes draft statutory revisions that are intended to fix this deficiency. The draft revisions propose to add this authority to s.144.396(3)(c), Wis. Stats. Regardless of the statutory placement of this authority, s.NR 407.09(1)(f)1., Wis. Adm. Code, must be revised if necessary to reference the correct statutory authority.

5. Revise ss.NR 407.14(1)(b), (c), (d), and (h), Wis. Adm. Code, to provide that if the conditions specified in these provisions are met, and the conditions meet the requirements of 40 CFR 70.7(f)(1), WDNR is required to reopen a permit for cause. Under the State's current provisions, reopening a permit under these circumstances is discretionary. 40 CFR 70.7(f)(1) establishes the conditions under which reopening a permit for cause is mandatory.

6. Revise s.NR 407.05, Wis. Adm. Code, to include the duty to supplement or correct application provisions, as required under 40 CFR 70.5(b).

7. Revise s.144.3935(1)(a), Wis. Stats., to provide WDNR the authority to issue operating permits to ''new'' and ''modified'' part 70 sources (as defined by ss.144.30(20s) and (20e), Wis. Stats.) that are not in compliance. 40 CFR 70.3(a) requires that the permitting agency must have authority to issue permits to all part 70 sources.

Revise s.NR 407.05(4)(h)2.c., Wis. Adm. Code, to provide that compliance plan application requirements for noncomplying new and modified sources include a narrative description of how the sources will achieve compliance. 40 CFR 70.5(c)(8)(ii)(C) requires this compliance plan application requirement for all part 70 sources that are not in compliance.

Revise s.NR 407.05(4)(h)3.c., Wis. Adm. Code, to provide for schedule of compliance application requirements for noncomplying new and modified sources. 40 CFR 70.5(c)(8)(iii)(C) requires schedules of compliance in all noncomplying part 70 source applications.

Revise s.NR 407.05(4)(h)4., Wis. Adm. Code, to provide for progress report application requirements for noncomplying new and modified sources. 40 CFR 70.5(c)(8)(iv) requires progress report schedules in all noncomplying part 70 source applications.

Revise s.NR 407.09(4)(b), Wis. Adm. Code, to provide for schedule of compliance and progress report requirements in permits issued to noncomplying new and modified sources. 40 CFR 70.6(c) (3) and (4) require schedule of compliance and progress report requirements in all part 70 permits that are issued to noncomplying sources.

8. Revise ss.NR 407.03(1) (d), (g), (h), (o), (s), (sm), and (t), Wis. Adm. Code, to ensure that no part 70 sources are exempted from the requirement to obtain an operating permit, as provided under 40 CFR 70.3. Section NR 407.03(1)(t) potentially exempts certain part 70 sources, and ss.NR 407.03(1) (d), (g), (h), (o), (s), and (sm) do not provide for adequate procedures to limit these sources' potential to emit. The 40 CFR 70.2 definition of ''major source'' considers the potential to emit of a source in determining major source status. The Wisconsin permitting exemptions listed above determine applicability based in part or totally on these sources' actual emissions or throughput, and the provisions in s.NR 407.03(4) do not provide a federally enforceable mechanism for limiting these sources' potential emissions to the actual emissions levels or throughput established in the exemptions.

To be eligible for interim approval, 40 CFR 70.4(d)(3)(ii) requires that a program provide for adequate authority to issue permits containing all applicable requirements to all title V sources. Due to the deficiencies outlined in 7. and 8. above, EPA is granting source category limited interim approval to Wisconsin's operating permit program. See 57 FR 32270 (July 21, 1992). Therefore, EPA is not including ''new'' and ''modified'' part 70 sources that are not in compliance (as defined by Wisconsin's operating permits program), and part 70 sources covered by Chapter NR 407.03(1) (d), (g), (h), (o), (s), (sm), and (t) as part of the interim approval of Wisconsin's program. The exclusion of these source categories from approval, however, does not affect Wisconsin's obligation to fix these deficiencies in order to be eligible for full approval.

This interim approval, which may not be renewed, extends until April 7, 1997. During this interim approval period, Wisconsin is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Wisconsin fails to submit a complete corrective program for full approval by October 7, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Wisconsin then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Wisconsin has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Wisconsin, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Wisconsin has come into compliance. In any case, if, 6 months after application of the first sanction, Wisconsin still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Wisconsin's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Wisconsin has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Wisconsin, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, 6 months after EPA applies the first sanction, Wisconsin has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Wisconsin's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Wisconsin upon expiration of interim approval.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section

112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA is also promulgating approval of Wisconsin's preconstruction permitting program found in Chapters 406 and 408, Wis. Adm. Code, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the Federal section 112(g) rule and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), title V and section 112(g) provide authority for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act, for example, section 110. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Wisconsin adequate time for the State to adopt regulations consistent with the Federal requirements.

## III. Administrative Requirements

### *A. Official File*

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments on the proposal received and reviewed by EPA, are maintained in the official file at the EPA Regional Office. The file is an organized and complete record of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The official file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

### *C. Regulatory Flexibility Act*

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 23, 1995.

**Robert Springer,**

*Acting Regional Administrator.*

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

## PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Wisconsin in alphabetical order to read as follows:

## Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Wisconsin

(a) Department of Natural Resources: submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires April 7, 1997.

(b) Reserved

* * * * *

[FR Doc. 95–5403 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 32, 36 and 65

**[CC Docket No. 93–50; FCC 95–56]**

## Accounting and Rate Treatment of Allowance for Funds Used During Construction (''AFUDC'') and Telephone Plant Under Construction (''TPUC'')

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a report and order to amend its rules regarding the accounting and ratemaking treatment for TPUC and interest costs incurred to finance construction projects. This action is to make FCC rules consistent with generally accepted accounting principles and as fair and reasonable as possible for ratemaking purposes.

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

**FOR FURTHER INFORMATION CONTACT:** Kim Yee, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in CC Docket No. 93–50, adopted February 13, 1995 and released February 28, 1995. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at 2100 M Street, NW., Suite 140, Washington, DC 20037, or call (202) 857–3800.

### Synopsis of Report and Order

1. This Report and Order amends Part 32, Uniform Systems of Accounts, and 65, Interstate Rate of Return Prescription Procedures and Methodologies, with respect to the proper accounting and ratemaking treatment for telephone plant under construction and allowance for funds used during construction.

2. Specifically, this Report and Order amended Part 32 to require carriers to capitalize AFUDC for both short-term and long-term TPUC using a capitalization rate based on the carrier's average cost of debt. It amended Part 65 to include the interstate portion of the TPUC balances in the interstate rate base and to require carriers to reduce their interstate revenue requirement by the amount of AFUDC capitalized in the current year.

3. This Report and Order eliminates Account 2004, Telecommunication Plant Under Construction-long term. All plant under construction will be record in Account 2003. The distinction between long-term and short-term construction is eliminated.

4. The Report and Order will be effective six months after it is published in the **Federal Register**.

**Rule Changes**

5. Accordingly, it is ordered that, pursuant to Section 1, 4(i), 201–205, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 219, and 220, parts 32, 36, and 65 of our Rules, 47 CFR parts 32, 36, and 65 are amended, as set forth below.

6. It is further ordered that, pursuant to Section 220(g) of the Communication Act of 1934, as amended, 47 U.S.C. 220(g) and Section 1.427(c) of the Commission's Rules, 47 CFR 1.427(c), the amendments to parts 32, 36, and 65 of the Commission's Rules, 47 C.F.R. parts 32, 36, and 65 as set forth below, shall be effective September 6, 1995.

**List of Subjects**

*47 CFR Part 32*

Uniform system of accounts.

*47 CFR Part 36*

Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

*47 CFR Part 65*

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communication Commission.

**William F. Caton,**

*Acting Secretary.*

Parts 32, 36 and 65 of Title 47 of the CFR are amended as follows:

## PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

**Authority:** Secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. secs. 154(i), 154(j) and 220 unless otherwise noted.

2. Paragraph 32.2000(c)(2)(x) is revised to read as follows:

### § 32.2000 Instructions for telecommunications plant accounts.

* * * * *

(c) * * *

(2) * * *

(x) Allowance for funds used during construction (''AFUDC'') provides for the cost of financing the construction of telecommunications plant. AFUDC shall be charged to Account 2003, Telecommunications Plant Under Construction, and credited to Account 7340. The rate for calculating AFUDC shall be determined as follows: If financing plans associate a specific new borrowing with an asset, the rate on that borrowing may be used for the asset; if no specific new borrowing is associated with an asset or if the average accumulated expenditures for the asset exceed the amounts of specific new borrowing associated with it, the capitalization rate to be applied to such excess shall be weighted average of the rates applicable to other borrowing of the enterprise. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the company in that period.

* * * * *

3. Section 32.2003 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

### § 32.2003 Telecommunications plant under construction.

(a) This account shall include the original cost of construction projects. (Note also § 32.2000(c).)

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account shall be transferred to Account 2006, Nonoperating Plant, without further direction or approval of this Commission. If a project is abandoned, the cost included in this account shall be charged to Account 7370, Special Charges.

* * * * *

### § 32.2004 [Removed]

4. Section 32.2004 is removed.

5. Section 32.7340 is revised in its entirety to read as follows:

### § 32.7340 Allowance for funds used during construction.

This account shall be credited with amounts charged to the telecommunications plant under construction account. (See § 32.2000(c)(2)(x).)

## PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

**Authority:** 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

2. Section 36.101 is revised to read as follows:

### § 36.101 Section arrangement.

(a) This subpart is arranged in sections as follows:

**General**

Telecommunications Plant in Service—Account 2001—36.101 and 36.102.
General Support Facilities—Account 2110—36.111 and 36.112.
Central Office Equipment—Accounts 2210, 2220, 2230—36.121 thru 36.126.
Information Origination/Termination Equipment—Account 2310—36.141 and 36.142.
Cable and Wire Facilities—Account 2410—36.151 thru 36.157.
Amortization Assets—Accounts 2680 and 2690—36.161 and 36.162.
Telecommunications Plant—Other Accounts 2002 thru 2005—36.171.
Rural Telephone Bank Stock—36.172.
Material and Supplies—Accounts 1220, and Cash Working Capital—36.181 and 36.182.
Equal Access Equipment—36.191.

3. Section 36.171 is revised to read as follows:

### § 36.171 Property held for future telecommunications use—Account 2002; Telecommunications plant under construction—Account 2003; and Telecommunications plant adjustment—Account 2005.

The amounts carried in Accounts 2002, 2003, and 2005 are apportioned among the operations on the basis of the apportionment of Account 2001, Telecommunications Plant in Service.

4. Section 36.222(c) is revised to read as follows:

### § 36.222 Nonoperating income and expenses—Account 7300.

* * * * *

(c) The portion reflecting allowance for funds used during construction is apportioned on the basis of the cost of Telecommunications Plant Under Construction—Account 2003. The portion reflecting costs for social and community welfare contributions and fees is apportioned on the basis of the apportionment of corporate operations expenses.

## PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

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

2. Section 65.450(d) is revised to read as follows:

**§ 65.450 Net income.**

* * * * *

(d) Except for the allowance for funds used during construction, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300–7450) and interest and related items (Accounts 7500–7540) and extraordinary items (Accounts 7600–7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

3. Section 65.820(a) is revised to read as follows:

**§ 65.820 Included items.**

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization. Any interest cost for funds used during construction capitalized on assets recorded in these accounts shall be computed in accordance with the procedures in § 32.2000(c)(2)(x) of this chapter.

[FR Doc. 95–5187 Filed 3–3–95; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 107

**[Docket No. HM–207D; Amdt. No. 107–33]**

**RIN 2137–AC60**

## Hazardous Materials Regulations; Penalty Guidelines

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, RSPA is publishing its hazardous material transportation enforcement civil penalty guidelines. This action provides the regulated community and the general public with guidance as to the factors RSPA considers in its hazmat penalty assessment process.

**EFFECTIVE DATE:** This rule is effective April 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Edward H. Bonekemper, III, Office of Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act, 1994, RSPA is publishing its hazardous material transportation (hazmat) enforcement civil penalty guidelines as an appendix to its regulations. This action will provide the regulated community and the general public with information concerning how RSPA generally begins its hazmat penalty assessment process and types of information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

RSPA enforcement personnel and attorneys use these guidelines as a partial means of determining a baseline civil penalty for selected violations of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), or the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.* (formerly the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*).

Because these guidelines are non-binding and are periodically updated, they are being published as an informational appendix to the enforcement regulations, Subpart D of Part 107 in Title 49 of the Code of Federal Regulations (CFR). They are being published without public notice or comment because they are merely informational, are not finally determinative of any issues or rights, and do not have the force of law. Because these guidelines are merely a general statement of agency policy and practice and because they impose no requirements, no notice of proposed rulemaking is necessary.

This rule publishes the guidelines as they existed on January 18, 1995. In any particular case, the Office of Hazardous Materials Enforcement will use the version of the guidelines in effect at the time of its referral of a matter to the Office of the Chief Counsel for possible issuance of a notice of probable violation (NOPV). However, since the guidelines are not legally binding, later changes in the guidelines may be considered in a particular case before a final order is issued.

On November 16, 1990, Congress amended the HMTA by passing the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Public Law 101–615); in HMTUSA, Congress increased the maximum penalties for HMTA and HMR violations from $10,000 to $25,000 per violation per day. The guidelines reflect the culmination of a five-year program under which RSPA increased the baseline penalty for most violations by 20 percent per year (on November 16 of each year between 1990 and 1994) to effect Congress' 1990 increase of the maximum penalty for hazmat violations.

These guidelines are a preliminary assessment tool used by RSPA personnel, and they create no rights in any party. They contain baseline amounts or ranges for violations that frequently have been cited in RSPA hazmat NOPVs. When a violation not described in the guidelines is encountered, it sometimes is possible to determine a baseline penalty by analogy to a similar violation in the guidelines.

Even when the guidelines are applicable to a violation, the use of the guidelines is only a starting point. They promote consistency and generally are used to provide some standard for imposing similar penalties in similar cases. However, no two cases are identical, and ritualistic use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria. Therefore, regardless of whether the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. These criteria are in 49 U.S.C. 5123 and 49 CFR 107.331.

The criteria that RSPA applies are the nature, extent, circumstances, and gravity of each violation; the degree of the violator's culpability; the violator's history of prior violations (if any); the violator's ability to pay; any effect of the penalty on the violator's ability to continue to do business, and other matters that justice requires. The baseline amount or range is an initial reflection of the nature, extent, circumstances, and gravity of the violation as compared with other types of violations. This amount then may be modified on the basis of case-specific information on nature, extent, circumstances, and gravity, as well as information with respect to the other enumerated factors.

Corrective action taken by a violator to prevent a recurrence of similar violations is a major consideration under ''other matters that justice requires.'' Application of the statutory assessment criteria may increase or decrease the baseline penalty amount or range. The two economic criteria, however, are only used to decrease penalties and are not used to increase penalties. Conversely, a violator's history of prior violations is used only to increase a penalty.

As discussed more fully below, the guidelines are not binding on RSPA or Department of Transportation personnel. Enforcement personnel and staff attorneys generally use the guidelines as a starting point for penalty assessment. However, they, the Chief Counsel, administrative law judges (ALJs), and the RSPA Administrator may deviate from the guidelines where appropriate, and are legally bound only by the statutory assessment criteria.

RSPA is aware of a recent decision by the United States Court of Appeals for the District of Columbia Circuit ruling that a Federal Communications Commission (FCC) civil penalty schedule used in its forfeiture proceedings may not be published as a policy statement, but must be issued as a rule in accordance with the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553 (b), (c). *United States Telephone Ass'n* v. *FCC*, 28 F.3d 1232 (D.C. Cir. 1994). RSPA has reviewed the Court's decision, as well as the FCC schedule and procedures that were the subject of the ruling, and believes that the ruling is not applicable to the RSPA guidelines.

A respondent has no right to be heard in an FCC forfeiture proceeding other than by the FCC Bureau that initiates the forfeiture action. The Bureau begins a proceeding by issuing a forfeiture order. 47 CFR 1.80(f). The respondent is permitted a written reply, and the Bureau issues a final administrative determination. *Id.* A hearing before an ALJ may be held, but solely at the Bureau's discretion, 47 CFR 1.80(g); the regulations themselves state that normally the matter will be heard by an ALJ only when it arises in conjunction with other proceedings for which a formal hearing is required, *id.* When a hearing *is* held, the decision of the ALJ is subject to Bureau review and approval. 47 CFR 1.273, 1.282. The FCC schedule governs the Bureau's penalty determination, whether following a respondent's written reply or in reviewing an ALJ decision. Thus, a respondent, even where it fully exercised its procedural rights, would be assessed a penalty determined according to a methodology that it had no opportunity to contest. It is firmly established that a standard must be issued as a rule if it is ''finally determinative'' of a respondent's obligations. *E.g., Brock* v. *Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 537 (D.C. Cir. 1986).

In contrast, the RSPA guidelines are used by the RSPA Office of the Associate Administrator for Hazardous Materials Safety (OHMS), at a staff, level to assist in developing recommended proposed penalties in enforcement cases. On receiving an NOPV setting forth the penalty, a respondent may demand a formal hearing before an ALJ. 49 CFR 107.319. The OHMS and RSPA's Office of Chief Counsel will employ the guidelines to determine the penalty for which it will argue before the ALJ; nonetheless, the ALJ is not bound by the guidelines, and retains his or her essential discretion.

An ALJ decision that is not appealed is a final administrative action. 49 CFR 107.323. A decision that is appealed is reviewed by the RSPA Administrator. 49 CFR 107.325. On review of an ALJ decision, the Administrator, as well, is not bound by the OHMS guidelines. Accordingly, the guidelines do not ''finally determin[e]'' a respondent's penalty obligation; a respondent that objects to the proposed penalty has the right to contest the penalty fully before the administrative decisionmaker. The administrative decisionmaker remains ''free to exercise his [or her] informed discretion.'' *Guardian Fed. Savings & Loan Ass'n* v. *Federal Savings & Loan Ins. Corp.*, 589 F.2d 658, 666, 668 (D.C. Cir. 1978).

In addition, the FCC schedule and the RSPA guidelines differ significantly in the degree to which they permit deviation in their use. The *USTA* court, citing the proposition that the policy/rule distinction turns on ''an agency's intention to bind itself to a particular legal policy position,'' 28 F.3d 1234, found that in over 300 cases, the FCC followed its fine schedule essentially without exception, *id.* at 1234–35.

The OHMS guidelines, as opposed to a penalty schedule, consist of a listing of violations and the baseline penalty, or range of penalties, proposed for each as of November 16, 1994, as well as an explanation of the methodology OHMS generally uses to modify the baseline proposed penalty on the basis of case-specific factors required to be considered under 49 U.S.C. 5123(c) and 49 CFR 107.331. The guidelines presuppose flexibility in their application; beyond that, the OHMS or, where respondent has waived formal hearing, the order of the Chief Counsel imposing a penalty, often has gone beyond the boundaries of the guidelines as warranted by particular evidence from or arguments of a respondent. RSPA expects to publish revised guidelines annually.

## II. Rulemaking Analyses and Notices

### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

### *Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law contains an express preemption provision (49 U.S.C. 5125(b)(1)) that preempts State, local, and Indian tribe requirements on certain covered subjects unless they are ''substantively the same'' as the HMR. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. The Federal hazardous materials transportation law (49 U.S.C. 5125(b)(2)), as amended, provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following

the date of issuance of the final rule and not later than two years after the date of issuance. This final rule is an informational appendix and imposes no requirements. Thus, preparation of a federalism assessment is not warranted.

*Regulatory Flexibility Act*

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact.

*Paperwork Reduction Act*

There are no new information requirements in this final rule.

**List of Subjects in 49 CFR Part 107**

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 107 is amended as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53.

2. Appendix A is added to subpart D of part 107 to read as follows:

## Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

I. This appendix sets forth the guidelines used by the Office of Hazardous Materials Safety (as of January 18, 1995) in making initial baseline determinations for recommending civil penalties. The first part of these guidelines is a list of baseline amounts or ranges for probable violations frequently cited in enforcement reports referred for action. Following the list of violations are general guidelines used by OHMS in making initial penalty determinations in enforcement cases.

**II. List of Frequently Cited Violations**

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| **Part 107—Requirements** | | |
| Failure to register as a carrier or shipper of hazardous material | 107.608 | $1,500 |
| **Part 171—Requirements** | | |
| Failure to inform foreign shipper and U.S. forwarding agent of 49 CFR requirements applying to a shipment within the U.S. | 171.12(a) | 7,200 |
| Failure to file a DOT 5800.1 Hazardous Materials Incident Report within 30 days following an unintentional release of hazardous materials in transportation. | 171.16 | 3,100 |
| **Part 172—Requirements** | | |
| Shipping Papers (§§ 172.200–172.205): | | |
| Failure to execute a shipping paper for a shipment of hazardous materials | 172.201 | 5,200 |
| Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper. | 172.201(a)(1) | 1,200 |
| Failure to include a proper shipping name in the proper shipping description | 172.202 | 1,850 |
| Failure to included a hazard class/division number in the proper shipping description | 172.202 | 1,850 |
| Failure to include the identification number in the proper shipping description | 172.202 | 1,200 |
| Using an incorrect identification number in the proper shipping description | 172.202 | 1,850 |
| Using an incorrect identification number in the proper shipping description, that changes the required response information. | 172.202 | 2,500 |
| Using a shipping description that is mostly correct, but includes extra or incorrect words | 172.202 | 1,000 |
| Using a shipping description that includes additional unauthorized information | 172.202 | 850 |
| Using a proper shipping description not in required sequence | 172.202 | 500 |
| Using a shipping description that is missing two required elements | 172.202 | 3,100 |
| Using a shipping description where more than two required elements are missing | 172.202 | 4,300 |
| Using a shipping name and hazard class that is incorrect, such that the material is misdescribed. | 172.202 | 3,700 |
| Using a shipping name and hazard class that is incorrect, such that a material is misclassified. | 172.202 | 6,200 |
| Failure to include the total quantity of hazardous material covered by a shipping description. | 172.202(c) | 430 |
| The letters ''RQ'' are not used in the shipping description to identify materials that are hazardous substances. | 172.203(c)(2) | 500 |
| Failure to include a required technical name in parentheses for a listed generic or ''n.o.s.'' material. | 172.203(k) | 1,200 |
| Failure to list an exemption number as part of the required shipping description | 172.203(a) | 1,200 |
| Failure to include the required shipper's certification on a shipping paper | 172.204(a) | 1,800 |
| Failure to execute the required shipper's certification on a shipping paper | 172.204 | 1,000 |
| Emergency Response Information Requirements (§§ 172.600–172.604): | | |
| Providing or listing incorrect emergency response information with or on a shipping paper (if significant difference in response). | 172.602 | 2,600 |
| Providing or listing incorrect emergency response information with or on a shipping paper (if no significant difference in response). | 172.602 | 1,300 |
| Failure to include an emergency response telephone number on a shipping paper | 172.604 | 2,600 |
| Failure to have the emergency response telephone number monitored while a hazardous material is in transportation. | 172.604 | 1,300 |
| Listing a fraudulent emergency response telephone number on a shipping paper | 172.604 | 3,700 |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| Listing an emergency response telephone number on a shipping paper that is not working or is incorrect. | 172.604 | 1,300 |
| Failure to provide required technical information when the listed emergency response telephone number is contacted. | 172.604 | 2,600 |
| Package Marking Requirements (§§ 172.300–172.338): | | |
| Failure to mark the required identification number on a package | 172.301(a) | 1,200 |
| Marking an incorrect identification number on a package | 172.301(a) | 1,850 |
| Marking an incorrect identification number on a package that changes the appropriate emergency response information. | 172.301(a) | 2,500 |
| Failure to mark the required shipping name on a package | 172.301(a) | 2,500 |
| Failure to mark the required shipping name and identification number on a package | 172.301(a) | 4,200 |
| Marking a package with an incorrect shipping name and identification number | 172.301(a) | 5,000 |
| Marking a package with an incorrect shipping name and identification number that does not affect emergency response information/actions. | 172.301(a) | 2,500 |
| Failure to include the required technical name(s) in parentheses for a listed generic or ''n.o.s.'' entry. | 172.301(c) | 1,200 |
| Failure to mark a package containing liquid hazardous materials with required orientation marks. | 172.312 | 3,700 |
| Failure to mark a package containing liquid hazardous materials with required orientation marks, when inside packagings have vented closures. | 172.312 | 4,200 |
| Package Labeling Requirements (§§ 172.400–172.450): | | |
| Failure to label a package, when required | N/A | 4,300 |
| Placing a label in a package when the label represents a hazard other than the actual hazard presented by the hazardous material in the package. | N/A | 5,000 |
| Placing a label not conforming to size requirements on a package | N/A | 1,000 |
| Placing a label on a package that does not contain a hazardous material | 172.401(a) | 1,300 |
| Placing a label that does not meet color specification requirements on a package | N/A | 600 to 2,500 |
| Failure to place a required subsidiary label on a package, when required | N/A | 2,500 |
| Failure to provide an appropriate division number on an explosive label | N/A | 5,200 |
| Placarding Requirements (§§ 172.500–172.560): | | |
| Failure to placard a freight container containing hazardous materials | N/A | 500 to 7,500 |
| Failure to properly placard a freight container containing Division 1.1, 1.2, or 1.3 (Class A or B) explosives. | 172.504 | 8,650 |
| Training Requirements (§§ 172.700–172.704): | | |
| Failure to train hazmat employees in the three required areas | 172.702 | 1,500 to 25,000 |
| Failure to train hazmat employees in one of the three required areas | 172.702 | 500 and up |
| Failure to train hazmat employees in two of the three required areas | 172.702 | 1,000 and up |
| Failure to maintain training records | 172.702 | 500 and up |
| **Part 173—Requirements** | | |
| Overpack Requirements (§ 173.25): | | |
| Failure to mark an overpack with a statement indicating that the inside packages comply with prescribed specifications when specification packaging is required. | 173.25(a)(4) | 3,100 |
| Reconditioner Requirements (§ 173.28): | | |
| Representing, marking, or certifying a drum as a reconditioned DOT packaging, when the drum did not meet a DOT specification. | 173.28(m)(3)(ii) [1] | 5,200 to 7,200 |
| Marking an incorrect registration number on a reconditioned packaging | 173.28(m)(3)(ii) [1] | 1,550 |
| Failure to properly conduct alternate leakage test | 173.28(m)(2) [1] | 5,000 |
| Representing, marking, or certifying a drum as altered from one specification to another, when the drum had not actually been altered. | 173.28(o)(1) [1] | 1,000 |
| IM Portable Tank Requirements (§ 173.32c): | | |
| Offering a hazardous material for transportation in an IM portable tank equipped with bottom outlets, when the material contained is prohibited from being offered in this type of packaging. | 173.32c(a) | 5,200 to 7,200 |
| Offering an IM portable tank for transportation that has not been visually inspected within last 2½ years per 173.32b(b). | 173.32c(c) | 5,000 |
| Offering an IM portable tank for transportation that has not been hydrostatically retested in last five years per 173.32b(a). | 173.32c(c) | 6,200 |
| Offering an IM portable tank for transportation that has not been visually or hydrostatically tested as required, or failing to remove the safety relief valves during testing. | 173.32c(c) | 12,500 |
| Failure to provide the required outage for a shipment of hazardous materials, that results in the release of hazardous materials. | 173.32c(k) | 15,500 |
| Cylinder Retesters (§§ 173.23, 173.34, and 173.302): | | |
| Failure to remark an aluminum exemption cylinder as a DOT 3 AL | 173.23(c) | 2,100 |
| Certifying or marking as retested a nonspecification cylinder | 173.34 | 5,200 to 7,200 |
| Marking a cylinder in or on the sidewall area when not permitted by the applicable specification. | 173.34(c)(1) | 8,650 |
| Failure to maintain legible markings on a cylinder | 173.34(e) | 1,200 |
| Failure to perform hydrostatic retesting at the minimum of 5/3 times the service pressure, or at the minimum specified test pressure. | 173.34(e) | 2,100 to 5,200 |
| Failure to perform visual external examination | 173.34(e)(1) | 3,100 |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| Failure to perform visual internal examination | 173.34(e)(1) | 3,600 |
| Failure to perform both visual external and visual internal examinations | 173.34(e)(1) | 4,200 |
| Inability to conduct a complete visual examination due to: excess paint build-up on a cylinder; failure to remove banding; failure to remove a permanent attachment; or failure to remove a plastic attachment that has torn or cracked. | 173.34(e)(1) | 3,100 |
| Failure to have a retester's identification number (RIN) | 173.34(e)(1)(i) | 3,600 |
| Failure to have current authority due to failure to renew a retester's identification number. | 173.34)e)(1)(i) | 2,500 |
| Failure to have a retester's identification number and marking another RIN on a cylinder. | 173.34(e)(1)(i) | 7,200 |
| Marking a RIN before successfully completing a hydrostatic retest. | 173.34(e)(1)(ii) | 3,100 |
| Marking a cylinder as having been retested without performing retest | 173.34(e)(1)(ii) | 8,650 |
| Performing hydrostatic retesting without demonstrating the accuracy of the testing equipment. | 173.34(e)(3) | 2,100 to 5,200 |
| Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion. | 173.34(e)(3) | 3,100 |
| Failure to perform a second retest, after equipment failure, at a pressure of 10% more or 100 psi more, whichever is less. | 173.34(e)(3) | 3,100 |
| Exceeding 90% of test pressure prior to conducting test | 173.34(e)(3) | 850 |
| Failure to condemn a cylinder with permanent expansion of 10% or greater (5% for certain exemption cylinders); failure to condemn cylinders with evidence of internal or external corrosion, denting, bulging, or rough usage. | 173.34(e)(4) | 6,000 |
| Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised. | Applicable Exemption | 8,650 |
| Failure to keep records of cylinder reinspection and retest | 173.34(e)(5) | 4,200 |
| Failure to keep accurate records of cylinder reinspection and retest | 173.34(e)(5) | 1,000 to 3,100 |
| Improper marking of the RIN or retest date on a cylinder | 173.34(e)5) | 1,550 |
| Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp | 173.34(e)(13)(iv) | 5,200 and up |
| Marking a "+" sign on a cylinder without determining the average or maximum wall stress. | 173.302(c)(3) | 3,000 to 4,300 |
| Representing, marking, or certifying a cylinder as meeting the requirements of an exemption, when the cylinder was not maintained or retested in accordance with the exemption. | N/A | 4,300 to 6,000 |
| Rebuilder Requirements (§ 173.34): | | |
| Representing a DOT–4 series cylinder as meeting the requirements of the Hazardous Materials Regulations without being authorized to do so by the Associate Administrator for Hazardous Materials Safety. | 173.34(l) | 7,200 |
| **Part 178—Requirements** | | |
| Third-Party Packaging Certifiers (General): | | |
| With testing completed, TPPC's certification directs manufacturer to improperly mark a packaging (e.g., steel drum to be marked UN 4G). | N/A | 2,100 |
| Manufacturers (General): | | |
| Failure to conduct drop testing from required distance | N/A | 4,200 |
| Manufacturing, marking, certifying, or selling a package marked to a specification, UN standard, or an exemption when applicable requirements are not met. | N/A | 5,200 to 8,650 |
| Certifying a packaging as meeting a UN standard when design qualification testing was not performed. | N/A | 6,000 to 10,800 |
| Failure to conduct periodic testing on UN standard packaging | N/A | 5,000 to 8,650 |
| Failure to properly conduct design qualification or periodic retesting for UN standard packaging. | N/A | 4,200 |
| Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging. | N/A | 7,200 |
| Failure to keep and maintain records of design qualification testing | 178.601(k)(1) | 4,200 |
| Failure to keep and maintain records of periodic retest | 178.601(k)(2) | 4,200 |
| Manufacturing DOT specification packaging after October 1, 1994 | N/A | 3,000 and up |
| Manufacturer Requirements—Fiberboard Boxes: | | |
| Manufacturing, marking, certifying, or selling a package marked to a specification, UN standard, or an exemption when applicable requirements are not met. | N/A | 4,300 to 7,200 |
| Certifying packaging as meeting UN 4G standard when it was not properly conditioned before design qualification testing. | N/A | 4,300 |
| Failure to properly mark a fiberboard box | N/A | 1,200 |
| Manufacturing Requirements—UN 1H1 Drums: | | |
| Failure to properly conduct alternate leakproofness test | N/A | 4,200 |
| Manufacturing Requirements—DOT High-Pressure Cylinders: | | |
| Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency. | N/A | 6,000 to 10,800 |
| Manufacturing Requirements—Spec. DOT 39 Cylinders: | | |
| Failure to have a registration number/failure to mark it on the cylinder | N/A | 3,700 |
| Marking another company's number on a cylinder | N/A | 5,000 |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| Failure to mark the date of manufacture or lot number on a cylinder | N/A | 3,100 |
| Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S./failure to obtain a chemical analysis from the foreign manufacturer. | N/A | 5,000 |
| Failure to conduct a complete visual internal examination | N/A | 3,500 to 5,200 |
| Failure to conduct a flattening test | N/A | 5,200 |
| Failure to conduct a burst test | N/A | 5,200 |
| Failure to properly conduct required test. | N/A | 4,200 |
| Failure to maintain a required inspector's report | N/A | 5,200 |
| Failure to maintain an accurate inspector's report | N/A | 1,200 to 3,700 |
| Manufacturing Requirements—DOT 4B Cylinders: | | |
| Failure to conduct a hydrostatic test by water jacket method on one cylinder out of each lot of 200 or less. | 178.50–14 | 5,200 |
| Failure to conduct a flattening test | 178.50–15 | 5,200 |
| Failure to conduct physical testing | 178.50–16 | 5,200 |
| Failure to properly conduct required test | N/A | 4,200 |
| Failure to maintain the required Inspector's report | N/A | 5,200 |
| Failure to maintain an accurate Inspector's report | N/A | 1,200 to 3,700 |
| Manufacturing Requirements—Steel Drums: | | |
| Failure to pass testing conducted in plant | N/A | 5,200 and up |
| Failure to properly conduct ''solution over partial seams'' test | N/A | 3,500 to 5,000 |
| Failure to retain chime cuts when conducting ''solution over partial seams'' testing | N/A | 3,100 |
| **Other Requirements** | | |
| Offeror Requirements (General): | | |
| Offering a hazardous material for transportation in an unauthorized, nonspecification, or nonstandard packaging. | N/A | 5,200 to 8,650 |
| Offering a hazardous material for transportation in an unauthorized, nonstandard, or nonspecification inner package. | N/A | 4,300 |
| Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation. | N/A | 10,400 |
| Offering a hazardous material for transportation that is covered by an exemption, without complying with its terms. | N/A | 5,200 to 8,650 |
| Offering a hazardous material for transportation in a packaging marked as manufactured to a DOT specification where that packaging was manufactured after October 1, 1994. | 171.14 | 3,000 and up |
| Offeror requirements (Class 1 (Explosives)): | | |
| Failing to mark the ''EX'' approval number on a package containing an explosive | 172.320 | 1,200 |
| Offering an unapproved explosive for transportation | 173.54(a) and 173.56(b) | 10,000 to 25,000 |
| Offering a leaking or damaged package of explosives for transportation | 173.54(c) | 10,000 to 25,000 |
| Offering a Division 1.3 (Class B) explosive for transportation that is misclassified as Division 1.4 (Class C) explosive. | N/A | 8,400 and up |
| Offeror Requirements (Class 3 (Flammable Liquid)): | | |
| Using an incorrect marking for the flashpoint in order to be excepted from specification packaging, for a flammable liquid with a flash point of 73° Fahrenheit or higher. | 173.118(b) [1] | 1,000 |
| Offering a flammable liquid with a flash point below 20° Fahrenheit for transportation in an unauthorized DOT 17E drum (20/18-gauge v. 18-gauge). | 173.119(a)(3) [1] | 6,200 |
| Offering a flammable liquid with a flash point of 73° Fahrenheit or above in nonspecification packaging, without marking the flash point or an indication that it was at or above 73° Fahrenheit on the packaging. | N/A | 3,600 to 5,200 |
| Offeror Requirements (Division 6.1 (Poisonous Liquids)): | | |
| Offering a poisonous liquid for transportation in a DOT 12A fiberboard box that was tested as required by § 178.210–10. | 173.346(a)(26) [1] | 5,200 |
| Offeror Requirements (Class 7 (Radioactive Materials)): | | |
| Failure to have a valid U.S. NRC approval certificate authorizing the use of a packaging as Type B (never having obtained one). | 173.415(c) | 4,300 |
| Failure to have a valid U.S. NRC approval certificate authorizing the use of a packaging as Type B (previously had one, but now expired). | 173.415(c) | 3,500 and up |
| Offeror Requirements (Portable or IM Tanks): | | |
| Offering a hazardous material for transportation in a DOT 57 or exemption portable tank that is out of test. | 173.32(e)(1)(ii) | 6,200 |
| Offering a compressed gas for transportation in a DOT 51 portable tank that is out of test (may be higher if offeror is also owner and portable tank has not been tested at all, or not for a long time). | 173.32(e)(l)(i) 173.315(a) | 5,200 to 8,650 |
| Offeror Requirements (Cylinders): | | |
| Offering a compressed gas for transportation in a cylinder that is out of test (may be higher if offeror is also owner and cylinder has not been retested at all, or not for a long time. | 173.301(c) | 5,200 to 8,650 |
| Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for at least 30 days. | 173.303(d) | 4,200 |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| Offering a mixture of a non-hazardous material and a compressed gas as an ORM–D without properly determining the internal pressure at equilibrium in a water bath heated to 130° Fahrenheit. | 173.1200(a)(ii)(E) | 6,200 |
| Carrier Requirements: | | |
| Transporting railway track torpedoes outside of flagging kits, in violation of E–7991 | N/A | 6,000 |
| Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage such explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent such damage. | 177.835(i) | 5,200 |
| Exemptions: | | |
| Requested renewal of an exemption prior to expiration, but shipped after expiration | N/A | 2,500 |
| Offered or transported a packaging or otherwise performed a function covered by an exemption after an exemption had expired (less than one year). | N/A | 2,900 |
| Offered or transported a packaging or otherwise performed a function covered by an exemption after an exemption had expired (more than one year). | N/A | 3,600 to 7,200 |

[1] Cite refers to provisions in effect September 30, 1991 (see 49 CFR Part 173, revised as of October 1, 1990).

## III. Consideration of Statutory Criteria

A. These guidelines are used by the Office of Hazardous Materials Safety (OHMS) in setting initial proposed penalties for hazmat violations. They indicate baseline amounts or ranges for probable violations frequently cited in enforcement reports and set forth general OHMS policy for considering statutory criteria.

B. The initial baseline determination partially considers the nature, extent, circumstances, and gravity of the alleged violation. That determination then is adjusted to consider all other evidence concerning the nature, extent, circumstances, and gravity of the alleged violation; degree of culpability; history of prior violations; ability to pay; effect of the penalty on ability to continue to do business; and such other matters as justice may require (a major component of which is corrective action taken by a respondent to prevent a recurrence of similar violations). In making a penalty recommendation, the baseline or range may be increased or decreased on the basis of evidence pertaining to these factors.

C. The following miscellaneous factors are used to implement one or more of the statutory assessment criteria.

## IV. Miscellaneous Factors Affecting Penalty Amounts

### *A. Corrective Action*

1. A proposed penalty is mitigated for documented corrective action of alleged violations taken by a respondent. Corrective action may occur: (1) After an inspection and before a Notice of Probable Violation (NOPV) is issued; (2) on receipt of an NOPV; or (3) after receipt of an NOPV (possibly after it is solicited by an RSPA attorney). In general, corrective action may reduce a penalty up to 25%. Mitigation may be taken into account in the referral memo or may be recommended prior to issuance of an Order by RSPA's Chief Counsel.

2. The two primary factors in determining the penalty reduction are extent and timing of the corrective action. In other words, mitigation will be determined on the basis of how much corrective action was taken and when it was taken. Systemic action to prevent future violations is given greater consideration than action simply to remedy violations identified during the inspection.

3. Mitigation is applied to individual violations. Thus, in a case with two violations, if corrective action for the first violation is more extensive than for the second, the penalty for the first will be mitigated more than that for the second.

### *B. Respondents That Re-Ship*

A shipper that reships materials received from another company, in the same packaging and without opening or altering the package, independently is responsible for ensuring that the shipment complies with Federal hazmat law, and independently may be subject to enforcement action if the package does not comply. Nevertheless, the reshipper is considered to have a lesser level of responsibility for compliance in those respects in which it reasonably relies on the compliance of the package as received. In most cases of this type, OHMS will discount the applicable baseline standard by about 25%. The specific knowledge and expertise of all parties must be considered in discounting for reliance on a prior shipper. This discount is applied before any consideration of mitigation based on corrective action.

### *C. Penalty Increases for Multiple Counts*

Under the Federal hazmat law, 49 U.S.C. 5213(a), each violation of the HMR and each day of a continuing violation (except for violations pertaining to packaging manufacture or qualification) is subject to a civil penalty of up to $25,000. Absent aggravating factors, OHMS, in its exercise of discretion, ordinarily will apply a single penalty for multiple counts or days of violation. In a number of cases, particularly those involving shippers, an inspector may cite two or more similar packaging violations for different hazardous materials. For example, the inspector may cite the same marking violation for two or more packages. OHMS usually will consider those additional violations as counts of the same violation and will not recommend multiples of the same baseline penalty. Rather, OHMS usually will recommend the baseline penalty for a single violation, increased by 25% for each additional violation.

### *D. Financial Considerations*

1. Mitigation is appropriate when the baseline penalty would (1) exceed an amount that the respondent is able to pay, or (2) have an adverse effect on the respondent's ability to continue in business. These criteria relate to a respondent's entire business, and not just the product line or part of its operations involved in the violation(s). Beyond the overall financial size of the respondent's business, the relevant items of information on a respondent's balance sheet include the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. These figures are considered on a case-by-case basis. In general, however, a current ratio close to or below 1.0 means that the company may have difficulty in paying a large penalty, and may justify reduction of the penalty or an installment payment plan. A small amount of cash on hand representing limited liquidity, even with substantial other current assets (such as accounts receivable or inventory), may warrant a short-term payment plan. Respondent's income statement also will be reviewed to determine whether a payment plan is appropriate.

3. Many companies are able to continue in business for extended periods of time with a small or negative net worth, and many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

4. In general, an installment payment plan may be justified where reduction of a proposed penalty is not, but the appropriateness of either (or both) will depend on the circumstances of the case. The length of a payment plan should be as short as possible, but the plan may consider seasonal fluctuations in a company's income if the company's business is seasonal (e.g., swimming pool chemical sales, fireworks sales) or if the company has documented specific reasons for current non-liquidity.

5. Evidence of financial condition is used only to decrease a penalty, and not to increase it.

*E. Penalty Increases for Prior Violations*

1. The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standard for increasing a baseline proposed penalty on the basis of prior violations is as follows:

a. One prior case—25% increase over the pre-mitigation recommended penalty
b. Two prior cases—50% increase over the pre-mitigation recommended penalty
c. Three prior cases—75% increase over the pre-mitigation recommended penalty
d. Four or more prior cases—100% increase over the pre-mitigation recommended penalty

2. A case of prior violations closed more than five years previously normally will not be considered in determining a proposed penalty.

*F. Penalty Increases for Use of Expired Exemptions*

Adjustments to the base line figures for use of expired exemptions can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired exemption, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

Issued in Washington, DC on February 27, 1995 under authority delegated in 49 CFR part 1.

**Ana Sol Gutíerrez,**

*Deputy Administrator, Research and Special Programs Administration.*

[FR Doc. 95–5179 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–60–P

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## Federal Highway Administration

## 49 CFR Part 393

**[FHWA Docket No. MC–94–28]**

## Parts and Accessories Necessary for Safe Operation; Glazing and Window Construction; Petition for Waiver To Permit Use of Automatic Vehicle Identification Transponder

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Grant of petition for waiver.

**SUMMARY:** The FHWA is granting a petition from the Commonwealth of Kentucky, lead State for the ADVANTAGE I–75 Program, and Heavy Vehicle Electronic License Plate, Inc., (HELP) requesting a waiver from the requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to allow mounting of an automatic vehicle identification (AVI) transponder near the upper border at the approximate center of the windshields of commercial motor vehicles.

The FHWA is granting the waiver to permit the use of the transponders in commercial motor vehicles participating in the ADVANTAGE I–75 operational (''beta'') test and the HELP corridor programs, subject to the conditions imposed in this notice.

**EFFECTIVE DATE:** April 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 12, 1994, the FHWA published a notice in the **Federal Register** (59 FR 51540) requesting comments on petitions received from the Commonwealth of Kentucky (Kentucky) and HELP. The petitioners are the lead organizations in multi-State partnerships of public and private sector interests conducting a series of operational tests that fall within the Commercial Vehicle Operations (CVO) element of the Intelligent Transportation System (ITS) Program (formerly known as the Intelligent Vehicle-Highway Systems (IVHS) program). The ADVANTAGE I–75 and HELP programs were created to allow commercial motor vehicles (CMVs) that are equipped with transponders and that comply with safety and administrative requirements to travel any segment of their respective instrumented highways at mainline speeds with minimal stopping at weight/inspection checkpoints.

The AVI device proposed for use in both programs is an electronic transponder designed to send and receive signals from a CMV to ports of entry (POEs) and safety inspection sites. The devices would be used to transmit a variety of information, such as the identity of the motor carrier, the gross weight of the vehicle, and the status of the vehicle's registration and fuel tax payments. The transponder measures 84 mm (3.3 inches) high by 112 mm (4.4 inches) wide by 38 mm (1.5 inches) deep.

In order to function effectively, the transponder must be able to properly transmit and receive signals from roadside receivers installed at States' ports of entry. The physical location of the transponder is a critical factor in its operation because of the potential for internal and external electronic interference. In addition, the device must be placed in a suitable location to allow drivers to read the instruction displayed on the transponder, i.e., to enter or to bypass the POE. An engineering evaluation performed by one of the ADVANTAGE I–75 electronic equipment contractors determined that a location near the center of the upper border of the windshield best allowed the device to meet both of these requirements.

However, 49 CFR 393.60(c) requires that no motor vehicle be operated with any label, sticker, decalcomania, or other vision-reducing matter covering any portion of its windshield or windows at either side of the driver's compartment, except that stickers required by law may be affixed to the bottom of the windshield, provided that no portion of any label, sticker, decalcomania, or other vision-reducing matter may extend upward more than 114 mm (4.5 inches) from the bottom of the windshield. The requirements of § 393.60, particularly the 114 mm (4.5 inch) limit specified in § 393.60(c), are independent of the physical dimensions of windshields.

Section 206(f) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e), formerly 49 U.S.C. app. 2505(f)) authorizes waivers of any regulation issued under the authority of that Act upon a determination that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

The FHWA proposed to grant the waiver on October 12, 1994. The notice described the agency's review of automotive engineering recommended practices, the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards, and recent research concerning drivers' field of view. It also examined current CMV cab designs related to placement of interior mirrors and sunvisors which occupy approximately the same space proposed for the AVI transponder. Based on the information obtained from this review, the FHWA concluded that a transponder mounted at the approximate center of the top of the windshield would be extremely unlikely to create a situation inconsistent with the safe operation of a CMV. This location is well outside the area recommended for windshield wiper sweep under the Society of Automotive Engineers (SAE) Recommended Practice J198 (Windshield Wiper Systems—Trucks, Buses, and Multipurpose Vehicles) and the area recommended for windshield defrosting under Recommended Practice J342 (Windshield Defrosting Systems Performance Guidelines—Trucks,

Buses, and Multi-Purpose Vehicles). The findings of four recent research reports on the subject also suggested that the location of an object, such as a transponder device, near the upper margin of a CMV's windshield is unlikely to have any effect on a driver's ability to observe nearby objects, such as pedestrians.

In addition, the FHWA believes that the public interest would be furthered by granting this waiver. Drivers whose CMVs are in compliance with registration, safety inspection, and operating requirements and permits may receive a signal from inspection officials to bypass ports of entry or inspection sites. This would have the effect of greatly improving inspection efficiency and effectiveness by enabling officials to focus their resources on vehicles with safety and size and weight infractions.

**Discussion of Comments to the Docket**

The FHWA received five comments to the notice of petition. Advocates for Highway and Auto Safety (AHAS) opposed the windshield mounting location for the transponder and criticized the prior field activity under the ADVANTAGE I–75 ''alpha'' test. The Department of California Highway Patrol (CHP) supported the general concept of the waiver, but expressed concern with the windshield mounting location due to a potential conflict with its State regulations. The Illinois Department of Transportation, Heavy Vehicle Electronic License Plate (HELP), Inc., and the Commonwealth of Kentucky Transportation Cabinet commented in favor of the waiver.

The AHAS stated its opposition to ''any action or item of equipment that might obstruct [the] view of CMV drivers,'' and added that ''[a]ny waiver that might pose an impediment to driver vision must be carefully scrutinized to assure that it is consistent with safety.'' ''It is axiomatic,'' it noted, ''that vision plays a central role in the driving task * * *.'' The AHAS believes the design of the transponder is inappropriate, and that the transponder hardware should be separated from the visual indicator provided for the driver.

The AHAS stated that it ''might support the FHWA's proposal because of the small size of the transponder, and the fact that it will be placed at the top of the windshield and outside the general field of view of the driver.'' However, ''Advocates cannot support the transponder proposal at this time since there are unresolved issues regarding the necessity of placing the device on the windshield.'' The AHAS also asserted that the FHWA provided insufficient technical justification for the windshield mounting location. It dismissed the agency's reasoning as merely rationalizing the ''convenience'' of that location.

The FHWA disagrees with the AHAS' assertions. The FHWA is required to evaluate the safety, not to regulate the design, of equipment for which a waiver is requested. The design is a product of the petitioners' engineering judgment. ADVANTAGE I–75 and HELP requested a waiver for tests of a device whose design had already been selected. The only issue was whether the placement of the AVI device would reduce motor carrier safety. The FHWA has fully considered that question.

The FHWA requested, and has received, a copy of engineering notes from Delco Electronics documenting its assessment of alternate transponder mounting locations. A copy of the test report has been placed in the docket.

Delco Electronics performed two tests of antenna pattern characterization to compare the strength of the signal received at the roadside reader. The first compared mounting locations at the lower-right, upper-right, upper-left, and lower-left corners of the driver's side of the windshield. The second compared two alternate locations with the transponder attached to the windshield (upper-right and lower-left corners of driver's side) with a third location utilizing a mounting bracket (upper-right corner of driver's side) that held the transponder just off the windshield. In both tests, the location at the upper-right corner of the driver's side of the windshield delivered a superior signal, as measured by relative attenuation in dBm [decibel-milliwatts, a measurement of signal power on a logarithmic scale]. The signal from the upper-right driver's side windshield mounting location was as much as 10 dBm stronger compared to other locations and to the bracket-mounted alternative.

For radio frequency (RF) devices to successfully perform their functions, their transmitted signals must be strong enough to reach their targets. The upper-right driver's side windshield mounting location appears to be the best among the several alternatives that Delco Electronics evaluated. The 10 dBm difference in the signal strength can be a key factor in facilitating the transponder's successful field implementation.

As ITS matures, it is likely that technical advancements and competition among manufacturers will improve the packaging and reduce the size of transponders and other ITS devices. It is conceivable that future clearance transponders could be mounted in locations other than a CMV's windshield, and indicator lamps added to dashboard instrumentation, as the AHAS recommends in its comments.

The FHWA believes that the AHAS' comments reflect a misinterpretation of the visibility issue. For example, the AHAS argued that the visible indicator was not necessary because the transponder would be hidden by a sunvisor. There is nothing in the notice that warrants that conclusion. Sunvisors are not always extended. The FHWA made the comparison between the vertical dimension of the transponder and that of sunvisors and sunshades in reference to a driver's useful field of view. The AHAS also questioned other technical issues regarding the transponder's placement without presenting research results comparable to those cited by the FHWA in support of the proposed waiver.

In addition, the AHAS contended that the FHWA should have followed formal waiver procedures for the ADVANTAGE I–75 Alpha Test, rather than issuing an enforcement moratorium that had the same effect. The FHWA disagrees. The Alpha Test was merely a technical shakedown of AVI transponders on a small number of vehicles (up to 200) to ensure that the equipment would work properly during the operational Beta Test. This kind of fine-tuning could not be done with stationary vehicles. The Alpha Test was closely controlled and monitored by the FHWA's State partners, since the participating States and motor carriers needed to be aware of problems before starting the Beta Test. The FHWA simply allowed ADVANTAGE I–75 to complete this preparatory evaluation. As the agency and the ADVANTAGE I–75 States expected, no visibility problems caused by the transponders were reported.

The Department of California Highway Patrol (CHP) did not object to the use of the transponder. It did, however, express a concern about the proposed mounting location: ''California law prohibits any object from being installed or affixed on any portion of the windshield except for * * * a 7-inch square in the lower corner of the windshield opposite the driver or in a 5-inch square in the lower corner of the windshield near the driver.'' The CHP provided a copy of the relevant regulation, California Vehicle Code Section 26708.

California's regulation differs from § 393.60(c). In the fall of 1994, the FHWA notified the CHP, as the State's Motor Carrier Safety Assistance Program (MCSAP) grant recipient, that the regulation must be brought into conformance with the FMCSRs. The

FHWA is working with California to address this issue, and recommends that the CHP accept the terms of this waiver while efforts are ongoing by the State to seek a legislative change.

The Illinois Department of Transportation (IDOT) strongly supports the waiver. The IDOT noted that windshield-mounted transponders are also being actively considered for automated toll collection and commercial vehicle [electronic] pre-clearance systems planned by Illinois and other States. The IDOT believes the waiver would not sacrifice truck safety, but would allow the transponders used in the programs to be positioned in vehicles so as to work more effectively.

HELP, Inc. stated that it is working with Intelligent Transportation Systems technology to provide benefits to both motor carriers and weigh station controllers. HELP emphasizes the importance of the location of the AVI transponder to insure that transmitted signals are received properly. It noted that the proposed ''right center quadrant'' windshield location is similar to the standard location of an inside rear-view mirror, reducing the impact of reduced or obstructed driver views. HELP is also working with the CHP to implement a weigh station bypass service called PRE-PASS™ which requires placement of the AVI transponder in that optimal location. Citing the CHP's comment to this docket, HELP notes that it is working with the CHP to draft legislation which will modify current California law to allow the AVI transponder to be mounted in this location. HELP strongly supports the proposed waiver and requests the FHWA's approval so that State governments and the motor carrier industry can proceed with implementing PRE-PASS™ and gain improvements in transportation productivity and efficiency.

The Commonwealth of Kentucky Transportation Cabinet (Kentucky), as lead State in the ADVANTAGE I–75 partnership, strongly supports the proposed waiver. Kentucky stated that over 200 trucks operated with the transponders for over a year. Staff from the Transportation Cabinet and the Kentucky Transportation Center rode in the trucks during testing, and also talked with drivers, dispatchers, maintenance personnel, and fleet managers. Kentucky became ''convinced that, when properly mounted, the transponder does not in any way obstruct the driver's view of the roadway. We have not had a single report of an incident or a concern relating to a transponder obstructing a driver's view.'' Kentucky goes on to state that

> Safety is a vital element of the ADVANTAGE I–75 project. The project is supported by Motor Carrier Enforcement Personnel in each of the participating states and province. We would not support any practice that we believed would compromise the safety of travelers on our nation's highways. Our support of the proposed waiver is based upon our conviction that the transponder does not obstruct the driver's vision or in any other way create a safety hazard. We invite those with strong concerns to visit one of our ADVANTAGE I–75 sites and to climb into the cab of a transponder-equipped truck.

**Conditions of the Waiver**

The conditions of the waiver proposed in the October 12, 1994, notice have been modified somewhat for the reasons set forth below.

As an alternative to complying with the wiring requirements of 49 CFR 393.27 and 393.33, the petitioners may, if they choose, comply with SAE Recommended Practice (RP) J1292, Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring. The guidelines contained in RP J1292 provide more comprehensive guidance and are equivalent to, and slightly more stringent than, §§ 393.27 and 393.33 of the FMCSRs. The RP covers 3 areas. It cross-references the same RPs incorporated by reference in § 393.27 (Wiring Specifications) for battery cable (SAE RP J1127) and for low-tension primary cable (SAE RP J1128). It cross-references SAE RP J163, Low-tension wiring and cable terminals and splice clips, which is indirectly referenced in § 393.33, Wiring [and] installation. The RP also requires wiring overload protective devices, fuses, or circuit breakers in this type of low-current application. While this last item is a slight change, the agency notes that the transponder's installation manual requires the power wire to be connected to the fused side of battery power, and states that a one-amp in-line fuse may be added for additional protection.

The duration and termination of the waiver discussed in Conditions III and VI have been changed so that the waiver shall remain in effect unless revoked by the FHWA. The grantees will be required to report the number of participating motor carriers and the number of transponder-equipped CMVs. Removing the time limit on the waiver will enable the grantees to continue operating their programs, provided the reports submitted indicate that the transponders are not affecting the safe operation of CMVs.

Condition VII now requires that the project reports be submitted within two years of the effective date of the waiver. A review after two years will enable the petitioners and the FHWA to assess a significant amount of data.

Condition IV has been modified to recognize the potential for the existence of nonconforming State or local laws or regulations that may not have been brought to the FHWA's attention.

Condition V of the October proposal would have limited the number of CMVs eligible for the waiver to 30,000. This restriction has been eliminated. Although that figure was a reasonable estimate of the number of participating vehicles, it would have required the petitioners to request adjustments to the ceiling, possibly more than once, if additional motor carriers wished to join the test program. Because the agency's review of the engineering standards and research on field of view discussed above indicated that use of the transponder would be very unlikely to create an unsafe operating situation, the FHWA has decided not to impose a numerical limit on the number of vehicles included in the program. However, both ADVANTAGE I–75 and HELP will be required to submit information on accidents involving the vehicles equipped with transponders, in accordance with Condition III.

**I. Location of the Transponder**

The transponder shall be mounted at or near the top center of the windshield, outside the area swept by the CMV's windshield wipers, or, at a minimum, outside the driver's sight lines to the road and highway signs or signals.

**II. Compliance With Wiring Requirements of the FMCSRs**

The installation of the transponder shall be required to comply with either (a) 49 CFR 393.27, Wiring specification, and 49 CFR 393.33, Wiring [and] installation, or (b) with SAE Recommended Practice J1292, Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring.

**III. Duration of Waiver; Accident and Incident Monitoring**

The waiver for HELP and ADVANTAGE I–75 is effective beginning April 5, 1995. The waiver shall remain in effect indefinitely, unless revoked by the FHWA.

Motor carriers participating in ADVANTAGE I–75 and HELP shall provide the FHWA with information on accidents (as defined in 49 CFR 390.5) involving the vehicles equipped with the transponders. Accident reports shall be submitted every 6 months, and shall contain the information listed below:

1. A copy of all accident reports prepared and required by State or other governmental entities or insurers.

2. Interview information with the driver and occupants of the CMV involved. The information shall specifically indicate whether the driver of the transponder-equipped vehicle believed that the presence of the transponder was a factor in the accident. The interview shall be conducted by a motor carrier employee responsible for supervising the driver of the transponder-equipped vehicle.

## IV. State and Local Laws

This waiver applies to all participating vehicles operating in interstate commerce. Although incompatible State laws or regulations perhaps cannot be changed to coincide with the start of the waiver period, the FHWA strongly encourages State and local authorities with safety regulations that would prohibit the use of the proposed transponders to accept the terms and conditions of this waiver.

## V. Vehicles To Be Equipped With Transponders

The names and USDOT numbers of the motor carriers participating in the ADVANTAGE I–75 and HELP programs, as well as the number of transponder-equipped CMVs operated by each carrier, shall be provided to the FHWA. Motor carriers not participating in these programs may not equip straight trucks, tractors, or motor coaches with the transponders discussed in this waiver.

## VI. Termination of Waiver

The FHWA may terminate this waiver at any time without prior warning if it determines that continued use of the transponders decreases the operational safety of the vehicles on which they are installed. Upon receipt of a notice of termination, motor carriers participating in the ADVANTAGE I–75 and HELP projects must immediately remove the transponders from their vehicles.

## VII. Report

ADVANTAGE I–75 and HELP shall provide separate reports describing the transponder's installation and use within two years after the effective date of the waiver. The reports shall include information obtained from the drivers on the device's effect on visibility through the windshield.

The FHWA has fully considered the information presented in the request for waiver, engineering and other technical material reviewed concerning requirements for visibility from vehicles, and the comments received. The FHWA hereby concludes that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Accordingly, the FHWA hereby grants the Commonwealth of Kentucky and Heavy Vehicle Electronic License Plate, Inc., their petition for a waiver from the requirements of 49 CFR 393.60(c).

**Authority:** 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: February 21, 1995.

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 95–5323 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 672 and 675

**[Docket No. 95022357–5057–01; I.D. 120594A]**

**RIN 0648–AG95**

## Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Pacific Halibut Bycatch

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; final 1995 specification of Pacific halibut bycatch allowances.

**SUMMARY:** NMFS issues a final rule to revise the management of seasonal Pacific halibut bycatch allowances annually specified for nontrawl fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This final rule also provides NMFS the authority to determine annually whether to apportion a halibut bycatch allowance to the BSAI jig gear fishery or the BSAI or Gulf of Alaska (GOA) hook-and-line gear fisheries for sablefish or to exempt these fisheries from halibut bycatch restrictions. Final 1995 halibut bycatch allowances for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, seasonal apportionments thereof, and the manner in which these seasonal apportionments will be managed under the final rule are specified. This action is necessary to manage halibut bycatch allowances consistent with seasonal apportionments of groundfish total allowable catch (TAC) amounts, prevent preemption of the BSAI jig gear fisheries by the attainment of halibut bycatch allowances apportioned to other nontrawl fisheries, and support the implementation of the sablefish/halibut individual fishing quota (IFQ) program. This action is intended to promote management and conservation of groundfish and other fish resources and to further the objectives contained in the fishery management plans for Alaska groundfish fisheries.

**EFFECTIVE DATE:** April 3, 1995.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori J. Gravel.

**FOR FURTHER INFORMATION CONTACT:** Susan Salveson, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

## Background

Fishing for groundfish by vessels in the exclusive economic zone of the GOA and BSAI is managed by NMFS according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 620, 672, 675, and 676.

Regulations for the management of halibut bycatch limits established for the GOA groundfish fisheries are set out at § 672.20(f). Regulations for the management of prohibited species bycatch limits established for the BSAI groundfish fisheries are set out at § 675.21. A proposed rule was published in the **Federal Register** on December 29, 1994 (59 FR 67268), that would revise the management of the halibut bycatch limits established for the GOA hook-and-line gear groundfish fisheries and the BSAI nontrawl groundfish fisheries. The proposed action would (1) address concerns about the potential closure of the BSAI jig gear fishery due to halibut bycatch in other nontrawl fisheries, (2) allow for the management of the seasonal apportionment of the halibut bycatch allowances annually specified for the BSAI Pacific cod hook-and-line gear fishery consistent with the management of the amount of Pacific cod TAC allocated to this fishery, and (3) authorize the exemption of the GOA and BSAI hook-and-line gear sablefish fishery from halibut bycatch restrictions to support the new sablefish/halibut IFQ program. Comments on the proposed

rule were invited through January 30, 1995. No written comments were received within the comment period.

Upon reviewing the reasons for revisions to regulations addressing the management of the halibut bycatch limits established for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, NMFS has determined that this final rule implementing the following measures is necessary for fishery conservation and management:

1. Separately define the GOA sablefish hook-and-line gear fishery under § 672.20(f)(1)(ii) and the BSAI groundfish jig gear fishery and the BSAI sablefish hook-and-line gear fishery under § 675.21(b)(2)(ii) so that these fisheries annually either receive a separate halibut bycatch allowance or are exempted from halibut bycatch restrictions. These determinations will be implemented by NMFS, after consultation with the Council, as part of the annual specification process set out at §§ 672.20(c) and 675.20(a)(7); and

2. Authorize NMFS, after consultation with the Council, to specify annually how seasonal bycatch allowances established for the BSAI nontrawl fisheries will be reapportioned among remaining seasons during the same fishing year.

Further explanation of, and reasons for, these measures are contained in the preamble to the proposed rule (59 FR 67268, December 29, 1994).

**Final 1995 Specifications of the Pacific Halibut Bycatch Mortality Limit Established for the BSAI Nontrawl Fisheries**

NMFS published with the proposed rule the proposed 1995 halibut bycatch allowances for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, seasonal apportionments thereof, and the manner in which these seasonal apportionments would be managed. The proposed specifications were recommended by the Council during its September 1994 meeting.

At its December 1994 meeting, the Council recommended final halibut bycatch specifications under the assumption that this final rule would be implemented early in 1995. These final recommendations would exempt the 1995 GOA and BSAI sablefish hook-and-line gear fisheries from halibut bycatch restrictions and establish a 300 metric ton (mt) halibut bycatch mortality limit for the 1995 GOA hook-and-line gear fisheries.

NMFS concurs with the Council's GOA halibut bycatch specifications for the hook-and-line gear fisheries as set out in Table 1. The justification for the 300 mt bycatch limit is discussed in the preamble to the proposed rule (59 FR 67268, December 29, 1994). This bycatch limit is apportioned between the demersal shelf rockfish fishery (10 mt) and the ''other hook-and-line gear'' fisheries (290 mt). Over 80 percent of the halibut bycatch mortality allowance apportioned to the ''other hook-and-line gear'' fisheries is seasonally apportioned to the first 5 months of the year to support the hook-and-line gear fishery for Pacific cod. The remaining amount of this halibut bycatch mortality allowance is divided between the last two seasons of the year to support the hook-and-line gear fishery for rockfish.

TABLE 1.—FINAL 1995 PACIFIC HALIBUT BYCATCH LIMIT, BYCATCH ALLOWANCES, AND SEASONAL APPORTIONMENTS THEREOF, FOR THE GOA HOOK-AND-LINE (H&L) GEAR FISHERIES

| Fishery | Halibut bycatch mortality allowance in mt |
|---|---|
| Demersal shelf rockfish | 10 mt. |
| Sablefish | Exempt. |
| Other H&L gear fisheries | |
| Jan. 1–May 14 | 242 mt. |
| May 15–Aug. 31 | 29 mt. |
| Sep. 1–Dec. 31 | 19 mt. |
| Total 1995 bycatch allowance specified for other H&L fisheries. | 290 mt. |
| Total | 300 mt |

NMFS also concurs with the Council's final recommendation for 1995 BSAI nontrawl fishery halibut bycatch allowances as set out in Table 2. The halibut bycatch allowances are unchanged from those implemented under the final 1995 groundfish specifications published in the **Federal Register** February 14, 1995 (60 FR 8479). Under the authority of this final rule, however, Table 2 specifies that the BSAI sablefish hook-and-line gear fishery is exempt from 1995 halibut-bycatch restrictions. Table 2 also specifies the accounting for any underharvest or overharvest of a seasonal apportionment of the Pacific cod halibut bycatch allowance.

TABLE 2.—FINAL 1995 PACIFIC HALIBUT BYCATCH ALLOWANCES, AND SEASONAL APPORTIONMENTS THEREOF, FOR THE BSAI NONTRAWL FISHERIES

| Fishery | Halibut bycatch mortality allowance in mt |
|---|---|
| Pacific cod hook-and-line [1] | |
| Jan. 1–Apr. 30 | 475 mt. |
| May 1–Aug. 31 | 40 mt. |
| Sep. 1–Dec. 31 | 210 mt. |
| Total | 725 mt. |
| Sablefish hook-and-line | Exempt. |
| Jig gear | Exempt. |
| Other nontrawl | 175 mt. |
| Groundfish pot gear | Exempt. |
| Total | 900 mt. |

[1] Any unused portion of the first season's halibut bycatch allowance specified for the Pacific cod hook-and-line gear fishery would be reapportioned to the third seasonal allowance. Any overage of a seasonal bycatch allowance specified for this fishery would be deducted from the remaining seasonal bycatch allowances specified for 1995 in amounts proportional to these remaining seasonal bycatch allowances.

The specifications set out in Tables 1 and 2 supersede the halibut bycatch specifications for the GOA hook-and-line gear fisheries published in the **Federal Register** February 14, 1995 (60 FR 8470) and for the BSAI nontrawl fisheries published in the **Federal Register** February 14, 1995 (60 FR 8479), respectively.

NMFS notes that separate halibut bycatch allowances may be established for the GOA and BSAI sablefish hook-and-line gear fisheries in future years under the annual specification process if halibut discard mortality in these fisheries is not reduced in the manner anticipated under the IFQ program.

**Classification**

This final rule is exempt from review under E.O. 12866.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this would not have a significant economic impact on a substantial number of small entities. The reasons were published in the **Federal Register** on December 29, 1994 (59 FR 67268). As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Parts 672 and 675**

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.20, paragraphs (f)(1)(ii) and (f)(3)(ii) are revised to read as follows:

### § 672.20 General limitations.

* * * * *

(f) * * *

(1) * * *

(ii) *Hook-and-line and pot gear fisheries.* (A) After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed and final halibut PSC limits for vessels using hook-and-line gear. The notification also may specify a halibut PSC limit for the pot gear fisheries. The halibut PSC limit specified for vessels using hook-and-line gear may be further apportioned, as bycatch allowances, to the fishery categories listed in paragraph (f)(1)(ii)(B) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (f)(1)(ii).

(B) For purposes of apportioning the hook-and-line halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species for which a TAC has been specified under paragraphs (a) and (c) of this section:

(*1*) *Demersal shelf rockfish in the Southeast Outside District.* Fishing with hook-and-line gear in the Southeast Outside District of the Eastern Regulatory Area of the Gulf of Alaska during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (f)(1)(ii)(B).

(*2*) *Sablefish fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (f)(1)(ii)(B).

(*3*) *Other hook-and-line gear fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery or a sablefish fishery as defined under paragraphs (f)(1)(ii)(B) (*1*) and (*2*) of this section.

* * * * *

(3) * * *

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the three hook-and-line gear fishery categories listed in paragraph (f)(1)(ii)(B) of this section will catch the Pacific halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire Gulf of Alaska or the applicable regulatory area or district to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

* * * * *

## PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

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

4. In § 675.21, paragraph (b)(2)(ii) (B) and (C) are redesignated as paragraphs (b)(2)(ii) (D) and (E) respectively; paragraphs (b)(3)(ii) and (b)(3)(iii) are redesignated as paragraphs (b)(3)(ii)(A) and (b)(3)(ii)(B), respectively; newly redesignated paragraph (b)(2)(ii)(E) and paragraphs (b)(4) and (d) are revised; and new paragraphs (b)(2)(ii)(B), (b)(2)(ii)(C), (b)(3)(ii) heading, and paragraph (b)(3)(iii) are added to read as follows:

### § 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) *Sablefish hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other groundfish species.

(C) *Groundfish jig gear fishery.* Fishing with jig gear during any weekly reporting period that results in a retained catch of groundfish.

* * * * *

(E) *Other nontrawl fisheries.* Fishing for groundfish with nontrawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line fishery, a sablefish hook-and-line fishery, a groundfish jig gear fishery, or a groundfish pot gear fishery as defined under this paragraph (b)(2)(ii).

(3) * * *

(ii) *Management of seasonal trawl fishery bycatch allowances.*

* * * * *

(iii) *Management of seasonal nontrawl fishery bycatch allowances.* (A) Any unused portion of a seasonal fishery bycatch allowance made under paragraph (b)(3)(i) of this section will be reapportioned to the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (b)(3)(i) of this section.

(B) If a seasonal apportionment of a fishery bycatch allowance made under paragraph (b)(3)(i) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (b)(3)(i) of this section.

(4) NMFS will publish annually in the **Federal Register** the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under § 675.20(a)(7). Public comment will be accepted by NMFS on the proposed bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days after publication in the **Federal Register**.

* * * * *

(d) *Attainment of a Pacific halibut nontrawl fishery bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the nontrawl fishery categories listed in paragraphs (b)(2)(ii) (A) through (E) of this section will catch the Pacific halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing

with the relevant gear type for each species and/or species group in that fishery category.

[FR Doc. 95–5392 Filed 3–3–95; 8:45 am]

BILLING CODE 3510–22–P

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## 50 CFR Parts 672 and 676

**[Docket No. 950223056–5056–01; I.D. 022195C]**

**RIN 0648–AG45**

## Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries In and Off of Alaska; Authority To Establish the Sablefish Season

**AGENCY:** National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; season opening date.

**SUMMARY:** NMFS issues a final rule amending the regulations establishing the Individual Fishing Quota (IFQ) sablefish fishing season. This action is necessary to provide the Director, Alaska Region, NMFS (Regional Director), with the authority to establish the IFQ sablefish season and announce it by publication in the **Federal Register**. It is intended to provide flexibility in starting the IFQ sablefish season to allow coordination with the IFQ halibut season established by the International Pacific Halibut Commission (IPHC).

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

**ADDRESSES:** Copies of this action, and the Regulatory Impact Review (RIR), including the Final Regulatory Flexibility Analysis (FRFA), for this action, can be obtained from Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21688, Juneau, AK 99802, Attention: Lori J. Gravel.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Section 676.23(b) is revised to authorize the Regional Director to establish the start of the IFQ sablefish fishing season by publication in the **Federal Register**. This framework provision allows the Regional Director to take into account the opening date of the IFQ halibut season when determining the opening date for the IFQ sablefish season. Allowing flexibility in starting the IFQ sablefish season facilitates its coordination with the start of the IFQ halibut season, which is determined by the IPHC annually each January. Starting the IFQ sablefish and IFQ halibut seasons concurrently benefits persons harvesting IFQ species and the Nation's fishery resource. Persons harvesting IFQ species would benefit economically because they would be able to retain both species, rather than having to discard one species because its season was closed. Also, the fisheries under the IFQ Program would benefit because regulatory discards, and the resulting mortality caused by those discards, would be reduced.

The IPHC, during its annual January meeting, decided that the Pacific halibut fixed gear season will start March 15, 1995, and end November 15, 1995. Consequently, the Regional Director announces under this final rule that the sablefish fixed gear directed fishing season will start 12 noon, Alaska local time (A.l.t.), March 15, 1995, and end 12 noon, A.l.t., November 15, 1995.

NMFS will publicize the March 15 opening date for both IFQ fisheries, which will give the public sufficient time to prepare for the IFQ season opening date.

No public comments were received on the proposed rule, published at 60 FR 2935 (January 12, 1995).

### Changes in the Final Rule from the Proposed Rule

In § 676.23(b), the text of the third sentence of the proposed rule is changed slightly in the final rule to clarify the regulatory text because it was grammatically awkward. The change is not substantive. Also, § 672.23(c) of this chapter currently includes an opening date for the fishing season for sablefish with hook and line gear. This paragraph conflicts with the intent to framework the opening date of the sablefish fishing season under the IFQ Program and is therefore removed.

### Classification

The RIR prepared for this action describes changes that are made to the IFQ Program. These changes are minor and do not substantially alter the current management process.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for the IFQ Program. The FRFA described and estimated the total number of small entities affected, and analyzed the economic impact on those small entities. Based on the FRFA, it was determined that the IFQ Program would have a significant economic impact on a substantial number of small entities. A copy of the FRFA can be obtained by contacting the Alaska Region, NMFS (see **ADDRESSES**).

The benefits referenced above will not be realized unless this final rule is effective March 1, 1995, the IFQ sablefish season start date originally specified in the IFQ regulations. Pursuant to 5 U.S.C. 553(d)(3), a rule may be made effective prior to 30 days after publication for good cause found and published with the rule. Opening the IFQ sablefish season on March 15, rather than March 1, avoids discards of halibut bycatch in the IFQ sablefish fishery from March 1 through March 15. Avoiding unnecessary discards is economically and biologically beneficial to the Nation's fishery resources and constitutes good cause for waiving requirement for a 30-day delay in effective date.

This rule has been determined to be not significant for purposes of E.O. 12866.

### List of Subjects in 50 CFR Parts 672 and 676

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 672 and 676 are amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. Section 672.23 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as (c), (d), and (e), respectively.

## PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

3. The authority citation for 50 CFR part 676 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

4. Section 676.23 is amended by revising paragraph (b) to read as follows:

**§ 676.23 IFQ fishing season.**

* * * * *

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Director and announced by publication in the **Federal Register**. The Regional Director will take into account the opening date of the Pacific halibut season when determining the opening date for sablefish for the purposes of reducing bycatch and regulatory

discards between the two fisheries. Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at §§ 672.20(g) and 675.20(h) of this chapter when made by an individual onboard who has a valid IFQ card and unused IFQ in the account on which the card was issued. Catches of sablefish in excess of the directed fishing standards and catches made without IFQ must be treated in the same manner as prohibited species.

[FR Doc. 95–5383 Filed 3–1–95; 3:56 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 60, No. 43
Monday, March 6, 1995

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 58

**[DA-93-04]**

### Grading and Inspection, General Specification for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Instant Nonfat Dry Milk

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise the United States Standards for Instant Nonfat Dry Milk. The proposed changes would reduce the direct microscopic clump count, limit the use of lactose as a processing aid in the instantizing process, provide fortification levels for instant nonfat dry milk with added vitamins A and D, and delete the optional phosphatase test. This proposal was developed in cooperation with the American Dairy Products Institute and other dairy trade associations.

**DATES:** Comments should be filed by May 5, 1995.

**ADDRESSES:** Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be available for public inspection at the Dairy Division in Room 2750–S during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

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

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

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

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality instant nonfat dry milk, USDA is proposing the following changes in the U.S. Standards for Instant Nonfat Dry Milk.

#### 1. Reduce the Direct Microscopic Clump (DMC) Count Requirements

For many years, the enumeration of bacteria in instant nonfat dry milk by the direct microscopic clump (DMC) count method has been used as a means of determining the quality of the product. Improvements in the quality of raw milk and the sanitary production of instant nonfat dry milk have resulted in a reduction in the DMC count. Proposed changes to reduce the allowable DMC count from 75 million per gram to 40 million per gram would more accurately reflect the ability of the U.S. dairy industry to produce high quality instant nonfat dry milk.

#### 2. Restrict the Amount of Lactose Used as a Processing Aid

The use of lactose as a processing aid in the production of instant nonfat dry milk is an acceptable practice provided the amount used does not exceed the amount necessary to produce the desired effect. If more lactose than necessary is added, the additional lactose serves no purpose other than to displace nonfat dry milk. Proposed changes would permit the use of lactose as a processing aid and restrict the amount added to a maximum of 2.0 percent of the weight of the nonfat dry milk.

#### 3. Provide Fortification Levels for Instant Nonfat Dry Milk With Added Vitamins A and D

The current U.S. Standards for Instant Nonfat Dry Milk do not provide fortification levels for product with added vitamins A and D. Proposed changes would incorporate fortification levels that are consistent with the Food and Drug Administration's standards of identity for nonfat dry milk fortified with vitamins A and D (21 CFR 131.127).

#### 4. Delete the Reference to the Optional Phosphatase Test

Pasteurization destroys pathogenic organisms and occurs when milk is heated to pasteurization temperature and held at that temperature for a specified period of time. To be considered pasteurized, the heating and holding of milk must take place in properly designed and installed equipment which has been inspected and sealed by the State Regulatory Agency. Phosphatase testing confirms only that a given sample of instant nonfat dry milk has been pasteurized but does not ensure that pasteurization has occurred for product manufactured before and after the sample tested.

Before U.S. grade can be assigned to instant nonfat dry milk, it must be produced in a dairy plant which has been inspected by USDA. When a USDA dairy plant inspection is conducted, the inspector evaluates the pasteurization system for compliance with program requirements.

The Department believes that the inspection and sealing of pasteurization equipment by the State Regulatory Agency and a review of the system by the USDA inspector provide adequate assurance that the instant nonfat dry milk has been properly pasteurized. For this reason, the Department is proposing to delete the reference to the optional phosphatase test that appears in 7 CFR part 58.2756. This action does not prohibit using the phosphatase test upon request.

#### 5. Update the Terminology and Format of the Standards

The current U.S. Standards for Instant Nonfat Dry Milk were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The proposal would update the standards to provide

consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When instant nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in instant nonfat dry milk.

Corollary changes are also proposed for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of instant nonfat dry milk set forth therein with the proposed revision of the United States Standards for Instant Nonfat Dry Milk.

### List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

## PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

**Authority:** Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.205 (b) is revised to read as follows:

#### § 58.205 Meaning of words.

* * * * *

(b) *Instant nonfat dry milk.* Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional process. Instant nonfat dry milk shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

* * * * *

3. In Part 58, Subpart U is revised to read as follows:

### Subpart U—United States Standards for Instant Nonfat Dry Milk [1]

**Definitions**

Sec.
58.2750 Instant nonfat dry milk.

**U.S. Grade**

58.2751 Nomenclature of the U.S. grade.
58.2752 Basis for determination of the U.S. grade.
58.2753 Specifications for the U.S. grade.
58.2754 U.S. grade not assignable.
58.2756 Test methods.

**Explanation of Terms**

58.2759 Explanation of terms.

### Subpart U—United States Standards for Instant Nonfat Dry Milk [1]

### Definitions

#### § 58.2750 Instant nonfat dry milk.

(a) Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional processes. Instant nonfat dry milk covered by these standards shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

(b) ''Nonfat dry milk'' is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions or 21 CFR part 131, ''Milk and Cream'' as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

### U.S. Grade

#### § 58.2751 Nomenclature of the U.S. grade.

The nomenclature of the U.S. grade is U.S. Extra.

#### § 58.2752 Basis for determination of the U.S. grade.

The U.S. grade of instant nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count and coliform count, milkfat content, moisture content, scorched particle content, solubility index, titratable acidity, and dispersibility.

#### § 58.2753 Specifications for the U.S. grade.

(a) *U.S. Extra Grade.* U.S. Extra Grade instant nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted instant nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Instant nonfat dry milk shall possess a uniform white to light cream natural color. It shall be reasonably free-flowing and free from lumps except those that readily break up with very slight pressure. See Table II of this section.

(3) *Bacterial estimate.* Not more than 30,000 per gram standard plate count. See Table III of this section.

(4) *Coliform count.* Not more than 10 per gram. See Table III of this section.

(5) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

[1] Compliance with the standards in this subpart does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

(6) *Moisture content.* Not more than 4.5 percent. See Table III of this section.

(7) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(8) *Solubility index.* Not more than 1.0 ml. See Table III of this section.

(9) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(10) *Dispersibility.* Not less than 85.0 percent. See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR

| Flavor characteristics | U.S. extra grade |
|---|---|
| Chalky | Slight. |
| Cooked | Slight. |
| Feed | Slight. |
| Flat | Slight. |

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE

| Physical appearance characteristics | U.S. extra grade |
|---|---|
| Color | White to light cream. |
| Free flowing | Reasonably. |
| Lumpy | Very slight pressure. |

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS

| Laboratory tests | U.S. extra grade |
|---|---|
| Bacterial estimate; Standard plate count; per gram (max) | 30,000 |
| Coliform count; per gram (max) | 10 |
| Milkfat content; percent (max) | 1.25 |
| Moisture content; percent (max) | 4.5 |
| Scorched particle content; mg (max) | 15.0 |
| Solubility index; ml (max) | 1.0 |
| Titratable acidity (lactic acid); percent (max) | 0.15 |
| Dispersibility; percent (min) | 85.0 |

**§ 58.2754 U.S. grade not assignable.**

Instant nonfat dry milk shall not be assigned the U.S. grade for one or more of the following reasons:

(a) The instant nonfat dry milk fails to meet the requirements for U.S. Extra Grade.

(b) The instant nonfat dry milk has a direct microscopic clump (DMC) count exceeding 40 million per gram.

(c) The instant nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

**§ 58.2756 Test methods.**

All required tests shall be performed in accordance with DA Instruction No. 918–RL, ''Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis,'' Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; the latest revision of ''Official Methods of Analysis of the Association of Official Analytical Chemists''; or the latest edition of ''Standard Methods for the Examination of Dairy Products'' available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

**Explanation of Terms**

**§ 58.2759 Explanation of terms.**

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(3) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(4) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the instant nonfat dry milk.

(5) *Flat.* Insipid, practically devoid of any characteristic reconstituted instant nonfat dry milk flavor.

(b) *With respect to physical appearance:*

(1) *Reasonably free-flowing.* Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.

(2) *Very slight pressure.* Lumps fall apart with only light touch.

(3) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(4) *Natural color.* A color that is white to light cream.

Dated: February 24, 1995.

**Kenneth C. Clayton,**

*Acting Administrator.*

[FR Doc. 95–5295 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–2–P

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**7 CFR Part 58**

**[DA–93–03]**

## Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Nonfat Dry Milk (Spray Process)

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise the United States Standards for Grades of Nonfat Dry Milk (Spray Process). The proposed changes would reduce existing bacterial standard plate count maximums and incorporate a coliform requirement to reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk. The reduction in the maximum standard plate count is made possible through improved raw milk quality and enhanced processing and sanitation techniques. The inclusion of a maximum coliform count adds to the assurance that post-pasteurization contamination has not occurred. This proposal was developed in cooperation with the American Dairy Products Institute and other trade associations.

**DATES:** Comments should be filed by May 5, 1995.

**ADDRESSES:** Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be available for public inspection at the Dairy Division in Room 2750–S during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

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

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

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

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk, USDA is proposing the following changes in the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process).

**1. Expand the U.S. Grade Standards To Include a Maximum Coliform Count in USDA-Graded Product**

Coliform bacteria, abundantly present in the environment, are destroyed by pasteurization. Post-pasteurization contamination has occurred when coliform bacteria are present in nonfat dry milk. The addition of a coliform requirement into the U.S. grade standard increases the assurance that USDA graded nonfat dry milk is produced and packaged in a sanitary manner.

**2. Reduce the Standard Plate Count Requirements**

Enumeration of bacteria by the standard plate count method has been a criterium used in the determination of U.S. grade for many years. Improvements in the sanitary production of nonfat dry milk have resulted in a gradual reduction in the number of bacteria present in the product. The proposal would reduce the allowable bacteria from 50,000 to 40,000 per gram for U.S. Extra Grade and from 100,000 to 75,000 per gram for U.S. Standard Grade. These proposed changes accurately reflect the ability of the U.S. dairy industry to produce high-quality nonfat dry milk and enhance the image of U.S. products on the world market.

**3. Update the Terminology and Format of the Standards**

The current U.S. Standards for Grades of Nonfat Dry Milk (Spray Process) were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The proposal would update the standards to provide consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in nonfat dry milk.

Corollary changes are also proposed for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of nonfat dry milk set forth therein with the proposed revision of the United States Standards for Grades of Nonfat Dry Milk (Spray Process).

**List of Subjects in 7 CFR Part 58**

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

## PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

**Authority:** Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In § 58.205, paragraph (a) is revised to read as follows:

### § 58.205 Meaning of words.

* * * * *

(a) *Nonfat dry milk.* The product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR 131 ''Milk and Cream'' as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

* * * * *

3. In Part 58, Subpart L is revised to read as follows:

### Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process) [1]

**Definitions**

Sec.
58.2525 Nonfat dry milk.

**U.S. Grades**

58.2526 Nomenclature of U.S. grades.
58.2527 Basis for determination of U.S. grade.
58.2528 Specifications for U.S. grades.
58.2529 U.S. grade not assignable.
58.2532 Test methods.

**Explanation of Terms**

58.2537 Explanation of Terms.

**Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification**

58.2538 Basis for obtaining heat treatment classification.
58.2539 Nomenclature of U.S. Heat Treatment Classification.
58.2540 Basis for determination of U.S. Heat Treatment Classification.
58.2541 Test method; whey protein nitrogen.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

### Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process) [1]

**Definitions**

### § 58.2525 Nonfat dry milk.

(a) ''Nonfat dry milk'' is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR part 131, ''Milk and Cream'' as issued by the Food and Drug Administration. Nonfat dry milk covered by these standards shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

**U.S. Grades**

### § 58.2526 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra.

(b) U.S. Standard.

### § 58.2527 Basis for determination of U.S. grade.

(a) The U.S. grade of nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count, milkfat content, moisture content, scorched particle content, solubility index, and titratable acidity.

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

### § 58.2528 Specifications for U.S. grades.

(a) *U.S. Extra Grade.* U.S. Extra Grade nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

(2) *Physical appearance.* Nonfat dry milk shall possess a uniform white to light cream natural color. It shall be free from lumps, except those that readily break up with slight pressure, and be practically free from visible dark particles. The reconstituted product shall be free from graininess. See Table II of this section.

(3) *Bacterial estimate.* Not more than 40,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

(5) *Moisture content.* Not more than 4.0 percent. See Table III of this section.

(6) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(7) *Solubility index.* Not more than 1.2 ml., except that product classified as U.S. High-heat may have not more than 2.0 ml. See Table III of this section.

(8) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(b) *U.S. Standard Grade.* U.S. Standard Grade nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted nonfat dry milk shall possess a fairly pleasing flavor, but may possess the following flavors to a slight degree: Bitter, oxidized, scorched, storage, or utensil; the following to a definite degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Nonfat dry milk may possess a slight unnatural color. It shall be free from lumps, except those that break readily under moderate pressure, and be reasonably free from visible dark particles. The reconstituted product shall be reasonably free from graininess. See Table II of this section.

(3) *Bacterial estimate.* Not more than 75,000 per gram standard plate count. See Table III of this section.

(4) *Milkfat content.* Not more than 1.50 percent. See Table III of this section.

(5) *Moisture content.* Not more than 5.0 percent. See Table III of this section.

(6) *Scorched particle content.* Not more than 22.5 mg. See Table III of this section.

(7) *Solubility index.* Not more than 2.0 ml., except that product classified as U.S. High-heat may have not more than 2.5 ml. See Table III of this section.

(8) *Titratable acidity.* Not more than 0.17 percent (lactic acid). See Table III of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

| Flavor characteristics | U.S. extra grade | U.S. standard grade |
|---|---|---|
| Bitter | — | S |
| Chalky | S | D |
| Cooked | S | D |
| Feed | S | D |
| Flat | S | D |
| Oxidized | — | S |
| Scorched | — | S |
| Storage | — | S |
| Utensil | — | S |

(—) = Not permitted S = Slight D = Definite.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE WITH CORRESPONDING U.S. GRADE

| Physical appearance characteristics | U.S. extra grade | U.S. standard grade |
|---|---|---|
| Dry Product: | | |
| Lumpy | Slight | Moderate. |
| Unnatural color | — | Slight. |
| Visible dark particles | Practically free | Reasonably free. |
| Reconstituted Product: | | |
| Grainy | — | Reasonably free. |

(—) = Not permitted.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS WITH CORRESPONDING U.S. GRADE

| Laboratory tests | U.S. extra grade | U.S. standard grade |
|---|---|---|
| Bacterial estimate; Standard plate count; per gram (max) | 40,000 | 75,000 |
| Milkfat content; percent (max) | 1.25 | 1.50 |
| Moisture content; percent (max) | 4.0 | 5.0 |
| Scorched particle content; mg (max) | 15.0 | 22.5 |
| Solubility index; ml (max) | 1.2 | 2.0 |
| U.S. High-heat (max) | 2.0 | 2.5 |
| Titratable acidity (lactic acid); percent (max) | 0.15 | 0.17 |

**§ 58.2529 U.S. grade not assignable.**

Nonfat dry milk shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The nonfat dry milk fails to meet or exceed the requirements for U.S. Standard Grade.

(b) The nonfat dry milk has a direct microscopic clump (DMC) count exceeding 100 million per gram.

(c) The nonfat dry milk has a coliform count exceeding 10 per gram.

(d) The nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

**§ 58.2532 Test methods.**

All required tests shall be performed in accordance with DA Instruction No. 918–RL, ''Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis,'' Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; the latest revision of ''Official Methods of Analysis of the Association of Official Analytical Chemists''; or the latest edition of ''Standard Methods for the Examination of Dairy Products'', available from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

## Explanation of Terms

**§ 58.2537 Explanation of terms.**

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Bitter.* Distasteful, similar to the taste of quinine.

(4) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(5) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(6) *Feed.* Feed flavors (such as alfalfa, sweetclover, silage, or similar feed) in milk carried through into the nonfat dry milk.

(7) *Flat.* Insipid, practically devoid of any characteristic reconstituted nonfat dry milk flavor.

(8) *Oxidized.* A flavor resembling cardboard and sometimes referred to as ''cappy'' or ''tallowy''.

(9) *Scorched.* A more intensified flavor than ''cooked'' and imparts a burnt aftertaste.

(10) *Storage.* Lacking in freshness and imparting a ''stale'' aftertaste.

(11) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sanitation of milking machines, utensils, or manufacturing equipment.

(b) *With respect to physical appearance:*

(1) *Practically free.* Present only upon very critical examination.

(2) *Reasonably free.* Present only upon critical examination.

(3) *Slight pressure.* Only sufficient pressure to disintegrate the lumps readily.

(4) *Moderate pressure.* Only sufficient pressure to disintegrate the lumps easily.

(5) *Grainy.* Minute particles of undissolved powder appearing in a thin film on the surface of a glass or tumbler.

(6) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(7) *Natural color.* A color that is white to light cream.

(8) *Unnatural color.* A color that is more intense than light cream and is brownish, dull, or grey-like.

(9) *Visible dark particles.* The presence of scorched or discolored specks.

## Supplement to U.S. Standards for Grades of Nonfat Dry Milk (Spray Process): U.S. Heat Treatment Classification

**§ 58.2538 Basis for obtaining heat treatment classification.**

Heat treatment classification is not a U.S. grade requirement except in cases when the higher solubility index specified for U.S. High-heat product is permitted. In all other instances, product submitted for USDA grading may be analyzed for heat treatment classification upon request and the results shown on the grading certificate. Heat treatment classification will be made available only upon a product graded by USDA.

**§ 58.2339 Nomenclature of U.S. Heat Treatment Classification.**

The nomenclature of U.S. Heat Treatment Classification is as follows:

(a) U.S. High-heat.

(b) U.S. Medium-heat.

(c) U.S. Low-heat.

**§ 58.2540 Basis for determination of U.S. Heat Treatment Classification.**

The whey protein nitrogen test shall be used in determining the heat treatment classification as follows:

(a) *U.S. High-heat.* The finished product shall not exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(b) *U.S. Medium-heat.* The finished product shall exceed 1.50 mg. undenatured whey protein nitrogen per gram of nonfat dry milk and shall be less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

(c) *U.S. Low-heat.* The finished product shall be not less than 6.00 mg. undenatured whey protein nitrogen per gram of nonfat dry milk.

**§ 58.2541 Test method; whey protein nitrogen.**

The whey protein nitrogen test shall be performed in accordance with DA Instruction 918–RL, ''Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis,'' Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20090–6456, or the latest edition of ''Standard Methods for the Examination of Dairy Products'', available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

Dated: February 24, 1995.

**Kenneth C. Clayton,**

*Acting Administrator.*

[FR Doc. 95–5293 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–02–P

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## Animal and Plant Health Inspection Service

## 9 CFR Parts 102, 104, 105, and 116

**[Docket No. 93–072–1]**

## Viruses, Serums, Toxins, and Analogous Products; Licenses, Inspections, Records, and Reports

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations under the Virus-Serum-Toxin Act to clarify certain provisions concerning licenses, inspections, records, and reports. The effect of the rule is to ensure that licensees are aware of the fact that licenses are issued on the condition that the licensee permit inspection of establishments, products, and records, and that a licensee must have at least one product license in order to maintain a valid establishment license. Failure to permit inspection would make the license subject to suspension or revocation. We are also proposing amendments concerning the content of records and reports and their availability for inspection. The proposed rule is necessary to clarify and simplify certain provisions of the regulations.

**DATES:** Consideration will be given only to comments received on or before May 5, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93–072–1, Animal and Plant Health Inspection Service, Regulatory Analysis and Development, Program and Policy Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–072–1. 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:** Dr. Anne Goodman, Chief Staff Microbiologist, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1237. 301–734–8245.

**SUPPLEMENTARY INFORMATION:** The Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151–159), as amended, is intended to ensure that veterinary biological products shipped in or from the United States are not worthless, contaminated, dangerous, or harmful. To achieve that purpose, the Act requires that such products be prepared in compliance with USDA regulations at an establishment holding an unsuspended and unrevoked USDA establishment license. No such products may be imported into the United States without a permit issued by the Administrator. Provisions regarding veterinary biological product licenses, license suspensions, and inspections appear in the regulations. See for example, 9 CFR Parts 102, 105, and 116.

The regulations currently provide in § 102.4(f) that when a licensee holding an establishment license no longer holds an unexpired, unsuspended, or unrevoked product license authorizing preparation of a product in the licensed establishment, the establishment license shall be submitted to the Administrator for termination.

Pursuant to § 102.2 of the regulations, licensees producing biological products in the United States are required to hold at least one unexpired, unsuspended, and unrevoked product license in addition to an establishment license. Therefore, and establishment license without a product license would not be valid. Section 102.2 would be amended to make this clear.

Section 102.4 would also be amended by revising paragraph (f) and by adding new paragraph (g). Paragraph (f) would be revised to provide that an establishment license is not valid unless the licensee also holds a product license, or is in the process of obtaining one. This would include activities such as requesting or filing a product license application or being involved in the development of a product. Paragraph (g) would provide that licenses for establishments where biological products are prepared shall be issued on condition that the licensee shall permit the inspection by USDA inspectors of such establishments and of products prepared in these establishments. Failure to permit such inspection could result in license suspension or revocation. This proposed change simply reflects the language in § 157 of the Virus-Serum-Toxin Act.

In § 104.6(b), editorial changes would be made to reflect organizational changes within the Animal and Plant Health Inspection Service. The words ''Veterinary Services'' would be removed and the words ''Animal and Plant Health Inspection Service'' would be added in their place.

Amendments would also be made to two sections of part 105 of the regulations which deal with suspension, revocation, or termination of biological product licenses or permits. In § 105.1, current paragraphs (a)(4) and (5) would be redesignated paragraphs (a)(5) and (6). New § 105.1(a)(4) would be added to assure that licensees, permittees, or foreign manufacturers of products that are imported under permit, maintain and make available for inspection all records relevant to the development and preparation of a product. Records and reports would be required to be complete and accurate.

Otherwise a license or permit could be subject to suspension or revocation under § 105.1. This proposed amendment to clarify the regulations is necessary because of recent incidence of noncompliance and refusal by licensees or permittees to produce requested records and reports. Since recordkeeping is already required under current § 116.8, no new paperwork burden would be imposed.

The second amendment which would be made in Part 105 is to § 105.4 concerning termination of licenses for inactivity. Proposed § 105.4(a) would specify that a product license or a permit would be terminated for inactivity unless intent to resume activity is demonstrated. Proposed § 105.4(b) would also specify that certain records be completed and retained in accordance with provisions in § 116.8. The proposed amendment would help to make the section clearer and easier to administer.

The proposed rule would also amend several sections of Part 116 which deal with records and reports. First § 116.1 would be amended to provide that detailed records and reports concerning biological products must be maintained at the establishment in which the products are produced, unless otherwise authorized (See proposed § 116.1(c)). This proposed change is necessary because of problems which have arisen during inspections involving records which were not available at the producing establishment. Since such records and reports are already required under current §§ 116.5 and 116.8, no new reporting or recordkeeping burden would be imposed.

Proposed § 116.1(b) would also be added to provide for appropriate records at the permittee's place of business. Proposed § 116.1(c) would be added to provide for maintenance of records at an alternate location. Such an alternate location would have to be confirmed by filing an addendum to the plot plan legend. The proposed amendment would provide for archiving of records, maintenance of distribution records, and compilation of consumer reports in off-premise facilities and other locations. Such archiving of records and reports should not result in paperwork burden that is greater than that already required under current §§ 116.5 and 116.8.

Section 116.5 would be amended to clarify that producers and importers of biological products may be required to submit reports containing information related to production activities or the purity, safety, potency, and efficacy of a product. The proposed amendment would clarify that APHIS be notified when a consumer report raises a question regarding purity, safety, potency, and efficacy of a product or a product is found to be unsatisfactory, or prepared, tested, or distributed in violation of the act or regulations. Again, the amendment is necessary to clarify for licensees, permittees, and foreign manufacturers the type of information that must be provided to APHIS. Since product purity, safety, potency, and efficacy remain the responsibility of licensees and permittees, no new paperwork burden would be imposed by these amendments over what is required in current part 116.

Section 116.7 would be amended to state that test summaries prepared from reports must be submitted to APHIS on Form 2008 or its equivalent prior to serial or subserial release.

Finally § 116.8, which deals with records and their retention, would be amended by including permittees in the requirement that records concerning biological products (other than disposition records) be completed prior to product marketing or export. In addition, permittees would be required to retain all records at a designated establishment or place of business for a specified period of time after the expiration date of the product. Since the permittee is normally a licensee or a representative of a foreign manufacturer, who already has recordkeeping requirements under current § 116.8, no new recordkeeping requirements would be imposed by this amendment.

**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 purposes of Executive order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

The proposed rule would amend the regulations in 9 CFR parts 102, 104, 105, and 116 to clarify existing provisions concerning licenses, inspections, records, and reports. Licenses are issued on condition that the licensee permit inspection of establishments, products, and records. The proposed rule would provide that the failure to permit such inspection would make the license subject to suspension or revocation. In order to hold a valid establishment license, licenses are required to have at least one unexpired, unsuspended, and unrevoked product license. Otherwise, the establishment license would be invalid. We are also proposing amendments concerning the content of records and reports and the availability of their inspection.

The proposed rule would make clear and unambiguous certain regulatory provisions. No new requirements are added in the proposed rule. Therefore, no adverse economic impact would result from the rule.

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0013.

**List of Subjects**

*9 CFR Part 102*

Animal biologics, Reporting and recordkeeping requirements.

*9 CFR Part 104*

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 105*

Animal biologics.

*9 CFR Part 116*

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102, 104, 105, and 116 would be revised as follows:

## PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 102.2, the introductory paragraph would be designated as paragraph (a) and a new paragraph (b) would be added to read as follows:

### § 102.2 Licenses required.

* * * * *

(b) An applicant who applies for an establishment license must also apply for at least one product license. An establishment license will not be issued without a license authorizing the production of a biological product in the establishment.

3. In § 102.4, paragraph (f) would be revised, paragraphs (g) and (h) would be redesignated as paragraphs (h) and (i), respectively, and new paragraph (g) would be added to read as follows:

### § 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(f) When a licensee no longer holds at least one unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product, or is in the process of obtaining a product license, the establishment license shall no longer be valid and shall be returned to the Administrator. In the case where an establishment license expires or is suspended or revoked, any product license authorizing preparation of a product at such establishment shall be invalid indefinitely or for as long as the suspension is in effect.

(g) Any license issued under this Part to establishments in which biological products are prepared shall be issued on condition that the licensee permit the inspection of such establishments, products, product preparation, and all relevant records as provided in Part 115. Failure to permit inspection may result in the license being suspended or revoked.

* * * * *

## PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

4. The authority citation for part 104 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

### § 104.6 [Amended]

5. In § 104.6, paragraph (b), the words ''Veterinary Services'' would be removed and the words ''Animal and Plant Health Inspection Service'' would be added in their place.

6. In 9 CFR part 105, the heading for the part would be revised to read as follows:

## PART 105—SUSPENSION, REVOCATION, OR TERMINATION OF BIOLOGICAL LICENSES OR PERMITS

7. The authority citation for part 105 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

8. In § 105.1, paragraphs (a)(4) and (a)(5) would be redesignated paragraphs (a)(5) and (a)(6), new paragraph (a)(4) would be added, and redesignated paragraph (a)(5) would be revised to read as follows:

### § 105.1 Suspension or revocation.

* * * * *

(a) * * *

(4) The licensee, permittee, or the foreign manufacturer has failed to maintain and make available for inspection records in connection with the development and preparation of product, has failed to provide complete and accurate information when requested, or has failed to provide complete and accurate information in the Outline of Production or in reports and records;

(5) The licensee or permittee has violated or failed to comply with any provision of the Virus-Serum-Toxin Act or the regulations in this subchapter;

* * * * *

9. Section 105.4 would be revised to read as follows:

**§ 105.4 Termination of licenses and permits for inactivity.**

(a) If a biological product has not been prepared by a licensee, or imported by a permittee for a period of five years or more, the Administrator may require the licensee to show intent to resume production, or the permittee to show intent to resume importation, within six months of notification. If the licensee does not resume preparation, or the permittee does not resume importation, within six months of notification, or within a mutually agreeable period, the product license, or permit, may be terminated by the Administrator.

(b) When a license or permit is terminated, the licensee or permittee shall continue to be subject to applicable records provisions of § 116.8.

10. In 9 CFR part 116, the heading for the part would be revised to read as follows:

## PART 116—RECORDS AND REPORTS

11. The authority citation for part 116 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

12. In § 116.1, paragraphs (a), (b) and (c) would be redesignated as paragraphs (a)(1), (a)(2), and (a)(3), respectively; redesignated paragraph (a)(1) would be revised; the introductory paragraph would be designated as paragraph (a) and would be revised; and new paragraphs (b) and (c) would be added to read as follows:

**§ 116.1 Applicability and general considerations.**

(a) Each licensee, permittee, and foreign manufacturer of biological products imported into the United States shall maintain, at the licensed or foreign establishment in which the products are prepared, detailed records of information necessary to give a complete accounting of all the activities within such establishment. Such records shall include, but shall not be limited to, the items enumerated in this part.

(1) Records shall be made concurrently with the performance of successive steps in the development and preparation of biological products, including new products under development. Such records shall include the date and where critical, the time that each essential step was taken, the identity and quantity of ingredients added or removed at each step, and any gain or loss of product from the beginning to the end of product preparation.

* * * * *

(b) In the case of imported products, each permittee shall maintain at the permittee's place of business detailed and accurate records that are relevant to each imported product and that include, but are not limited to, importation documents, sampling records, tests summaries, shipping records, and inventory and disposition records as required in § 116.2.

(c) When authorized by the Administrator, the licensee, permittee, or foreign manufacturer may maintain and retain records required under part 116 at an alternative location. Such authorization shall be confirmed by the filing of an addendum to the plot plan legend. The addendum shall list the location of the records and the condition of their storage and shall permit the inspection of the records by APHIS inspectors, or foreign inspectors acting on behalf of APHIS.

(Approved by the Office of Management and Budget under control number 0579–0013)

**§§ 116.2, 116.3, 116.4, and 116.6 [Amended]**

13. At the end of §§ 116.2, 116.3, 116.4, and 116.6, the reference to OMB control number ''0579–0059'' would be removed and the number ''0579–0013'' would be added in its place.

14. Section 116.5 would be revised to read as follows:

**§ 116.5 Reports.**

(a) When required by the Administrator, reports containing accurate and complete information concerning biological products, including but not limited to, product development and preparation, consumer reports, and market suspensions and recalls, shall be prepared and submitted to the Animal and Plant Health Inspection Service by the licensee, permittee, or foreign manufacturer whose products are being imported or offered for importation. Unless otherwise authorized by the Administrator, records necessary to make such reports shall be maintained in each establishment.

(b) If, at any time, consumer reports concerning the use of products raise questions regarding purity, safety, potency, or efficacy of the products; or a biological product appears to be unsatisfactory or is found to have been prepared, tested, or distributed in violation of the Virus-Serum-Toxin Act or the regulations; the licensee, permittee, or foreign manufacturer shall immediately report the circumstances and the action taken, if any, to the Animal and Plant Health Inspection Service.

(Approved by the Office of Management and Budget under control number 0579–0013)

15. In § 116.7, the second sentence would be revised to read as follows:

**§ 116.7 Test records.**

* * * Summaries of such tests shall be prepared from such records and submitted to the Animal and Plant Health Inspection Service using APHIS Form 2008 or an acceptable equivalent form prior to release of the serial or subserial. * * *

* * * * *

16. Section 116.8 would be revised to read as follows:

**§ 116.8 Completion and retention of records.**

All records (other than disposition records) required by this part shall be completed by the licensee, permittee, or foreign manufacturer before any portion of a serial of any product may be marketed in the United States or exported. All records shall be retained at the licensed or foreign establishment or permittee's place of business for a period of two years after the expiration date of a product, or for such longer period as may be required by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0013)

Done in Washington, DC, this 28th day of February 1995.

**Terry L. Medley,**

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

[FR Doc. 95–5406 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–34–M

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## 9 CFR Parts 102 and 114

**[Docket No. 93–136–1]**

## Viruses, Serums, Toxins, and Analogous Products; State-Federal Licensure of Veterinary Biologics

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations concerning State-Federal licensing of veterinary biological products. The effect of the amendment would be that a Federally licensed establishment would not be allowed to produce the same veterinary biological product under both a State and Federal product license. Autogenous biologics would not be subject to the same requirement, in that a Federally licensed establishment could hold both State and Federal product licenses for autogenous biologics, but must choose to produce each specific serial of such biologic

under either a State or Federal product license. No autogenous biologic could be produced at the same time under both a Federal and State license. The amendment is necessary in order to ensure the integrity of the Federal licensing system and the safety of biological products produced in Federally licensed establishments.

We are also removing outdated sections from the regulations referring to interim establishment licenses and exemption procedures that were permitted during the 5-year transition period to attain Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act.

**DATES:** Consideration will be given only to comments received on or before May 5, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93–136–1, Animal and Plant Health Inspection service, Regulatory Analysis and Development, Program and Policy Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–136–1. 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 requests to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20723–1237, (301) 734–8245.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, licenses veterinary biological products under the Virus-Serum-Toxin Act (21 U.S.C. 151–159, hereinafter, the Act), as amended by the Food Security Act of 1985. Veterinary biologics licensed by APHIS include products such as vaccines, antitoxins, viruses, diagnostics, and autogenous biologics (vaccines, bacterins, and toxoids) which are normally used in the herd of origin (the herd from which the disease causing microorganism is derived) to immunize animals against infectious disease.

Under the Act, veterinary biological products are licensed on the basis of their purity, safety, potency, and efficacy. The 1985 amendments to the Act exempt certain products from the requirement that they be produced pursuant to an unsuspended and unrevoked Federal license. Such products include those which are prepared solely for distribution within the State of production pursuant to a license granted by such State under a program approved by the Administrator of APHIS.

The regulations in 9 CFR part 102 contain Federal licensing provisions for biological products. This proposed rule would amend the regulations in part 102 by removing the outdated reference to Federal interim licenses in § 102.1 and by removing § 102.4(h), which refers to outdated provisions. We would also be making minor editorial changes to § 102.4(b)(3) and § 102.6 (introductory paragraph and paragraph (a)) to reflect organizational changes within APHIS.

The regulations in 9 CFR part 114 prescribe conditions under which an unlicensed product may be prepared in a USDA-licensed establishment. Section 114.2(c) prohibits the production of unlicensed veterinary biological products in licensed establishments, except when an establishment is licensed by USDA for an interim period as provided in § 114.2(b), when production of an experimental biological product is authorized in accordance with 9 CFR part 103, or when biological products are subject to the provisions of § 107.2 (products produced under State license).

The proposed rule would amend part 114 by removing from § 114.2 paragraphs (b) and (d) which refer to outdated provisions for interim licenses and to certain exemption procedures that were used in implementing the 5-year transition to Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act.

The proposed rule would also establish the conditions that must be maintained when a State-licensed veterinary biological product is produced in an establishment holding a U.S. Veterinary Biologics Establishment License. The proposed rule would require that an establishment holding a U.S. Veterinary Biologics Establishment License that is also producing products licensed by a State may produce a product either under a U.S. Veterinary Biological Product License or a State product license, but the establishment cannot produce the same product under both USDA and State product licenses. It should be noted that in order to be Federally licensed, an establishment must hold at least one Federal product license. Autogenous biologics would not be subject to the proposed requirement in that an establishment may hold both a State and Federal product license for autogenous biologics but each serial of an autogenous biologic must either be produced pursuant to the State license or the Federal license. The wide variety of different autogenous biologics that are made and the different conditions for their use dictate the need for choosing to produce some of these products under a State product license and others under a USDA product license. This choice would permit such establishments to produce autogenous biologics for intrastate use only, under a State product license, or for both intrastate or interstate use, under a U.S. Veterinary Biological Product License, provided that certain conditions of production are maintained. This proposed rule would define such conditions and ensure that the primary regulatory responsibility for each serial of product is clearly identified prior to production.

Under the proposed amendments, a biological product produced in a USDA-licensed establishment could be produced under either a State or U.S. Veterinary Biological Product License, but not both. Prior to the issuance of a U.S. Veterinary Biological Product License (including a conditional license), any State product license for the same product would have to be surrendered to the State licensing authority. As explained previously, autogenous biologics would not be subject to these requirements.

Under the proposed amendments, State-licensed products (including autogenous biologics) would only be allowed to be distributed or shipped intrastate, would not be allowed to bear a U.S. Veterinary Biological Product License Number, or otherwise be represented as having met the requirements for USDA product licensure. Labeling of State- and USDA-licensed products produced in the same establishment would be required to be distinctly different in color and design.

All biological products in USDA-licensed establishments, whether State- or USDA-licensed, would only be prepared in locations indicated in legends filed in accordance with 9 CFR part 108. A description of each State-licensed product would have to be filed with APHIS as part of the blueprint legends that is sufficient for APHIS to determine any risk to other products in the establishment and to ensure that contamination does not occur during production.

The proposed amendments would also specify that certain reporting and recordkeeping requirements have to be met for both State- and USDA-licensed products.

The proposed amendments under § 114.2(c) would require that autogenous biological products produced in a USDA-licensed establishment be identified as produced under the provisions of the State license or the Federal license at the time that a culture of microorganisms (the isolate) is received at the establishment. If, after producing the product pursuant to one license, the licensee elects to produce an autogenous biologic from the same isolate under the other license, approval of the other licensing authority would have to be obtained.

In addition, the proposed amendment would require that a State-licensed autogenous biologic prepared in a Federally licensed establishment bear a ''true name'' indicating the State of licensure, such as ''(name of State) Autogenous Bacterin'' or ''(name of State) Autogenous Vaccine.''

**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 purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

The effect of the proposed rule would be to remove outdated sections from the regulations in §§ 102.1 and 102.4(h) and § 114.2 (b) and (d). These sections refer to outdated provisions related to the implementation of the 1985 amendments to the Virus-Serum-Toxin Act. These provisions expired on June 30, 1991.

The proposed rule would also establish conditions applicable to some 100 producers to prepare a biological product under either a State or USDA product license in a USDA licensed establishment. An exception would be provided for autogenous biologics. The proposed amendment would not have an adverse economic impact on these producers of biologics since it would still allow the production of both State and Federally licensed products in Federally licensed establishments. Therefore, it is not anticipated that the amendment would impose economic burdens on producers or small businesses.

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects**

*9 CFR Part 102*

Animal biologics, Reporting and recordkeeping requirements.

*9 CFR Part 114*

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102 and 114 would be amended as follows:

## PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 102.1 [Revised]**

2. Section 102.1 would be revised to read as follows:

Each establishment qualified to prepare biological products under the Virus-Serum-Toxin Act shall hold an unexpired and unrevoked U.S. Veterinary Biologics Establishment License issued by the Administrator and a U.S. Veterinary Biological Product License for each product prepared in such establishment unless the product is subject to the provisions of 9 CFR parts 103 or 106 of this subchapter.

**§ 102.4 [Amended]**

3. In § 102.4, paragraph (b)(3), the words ''Veterinary Services'' are removed and the words ''Animal and Plant Health Inspection Service'' are added in their place.

4. In § 102.4, paragraph (h) would be removed.

**§ 102.6 [Amended]**

5. In § 102.6, in the introductory paragraph and paragraph (a), the term ''Deputy'' is removed.

## PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

6. The authority citation for part 114 would be revised to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

7. Section 114.2, paragraphs (b) and (d) would be removed; paragraph (c) would be redesignated paragraph (b) and revised; and a new paragraph (c) would be added to read as follows:

**§ 114.2 Products not prepared under license.**

* * * * *

(b) Except as provided in 9 CFR part 103, a biological product shall not be prepared in a licensed establishment unless the person to whom the establishment license is issued holds an unexpired, unsuspended, and unrevoked product license issued by the Administrator to prepare such biological product, or unless the products prepared are subject to the provisions of § 107.2 of this subchapter.

(c) A biological product produced in a USDA-licensed establishment shall be produced under a U.S. Veterinary Biological Product License or a License granted by a State under § 107.2 (referred to as a State biological product license and the products prepared pursuant thereto as State-licensed biological products, including autogenous biologics), but not under both a U.S. Veterinary Biological Product License and a State biological product license. Before a U.S. Veterinary Biological Product License (including a conditional license) is issued, the licensee shall relinquish its State license for that product: *Provided*, That autogenous biologics shall not be subject to this provision when they are prepared in accordance with the provisions of paragraph (c)(5) of this section.

(1) State-licensed biological products (including autogenous biologics) shall only be distributed or shipped intrastate, must not bear a U.S. Veterinary Biologics Establishment License Number, and must not otherwise be represented in any manner as having met the requirements for a U.S. Veterinary Biological Product license. Labeling of State- and USDA-licensed biological products produced in the same establishment must be distinctly different in color and design.

(2) All biological products in USDA-licensed establishments, whether licensed by USDA or by the State, shall be prepared only in locations indicated in legends filed in accordance with 9 CFR part 108. A description of each State-licensed product must be filed with the Animal and Plant Health Inspection Service as part of the blueprint legends and must be sufficient for Animal and Plant Health Inspection Service to determine any risk to the production of other products in the licensed establishment and to determine that adequate procedures are followed to prevent contamination during production.

(3) Records in such establishments must be maintained in accordance with §§ 116.1 and 116.2 of this subchapter and shall include all products licensed by the State or USDA.

(4) Reports prescribed in § 116.5 of this subchapter for USDA-licensed establishments shall be submitted for all veterinary biological products in the establishment.

(5) Under the following conditions, an autogenous biologic may be produced in a USDA-licensed establishment under either a State or U.S. Veterinary Biological Product License:

(i) When a culture of microorganisms, isolated from a herd in a State, is received at a USDA-licensed establishment that is in the same State but that holds both a State and a U.S. Veterinary Biological Products License for autogenous biologics, the isolate shall be designated by the licensee for use in the production of an autogenous biological product under either the State product license, or the U.S. Veterinary Biological Product License: *Provided*, That the isolate meets the requirements of the respective regulatory authority for an autogenous biologic. If, after producing the product pursuant to one license, the licensee elects to produce an autogenous biologic from the same isolate under provisions of the other license, the licensee may do so only with the approval of the other licensing authority.

(ii) The true name of a State-licensed autogenous biologic shall specify the State of licensure: e.g. ''(State) Autogenous Bacterin'' or ''(State) Autogenous Vaccine''.

Done in Washington, DC, this 28th day of February 1995.

**Terry L. Medley,**

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

[FR Doc. 95–5407 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–34–M

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Part 1700

## Requirements for the Special Packaging of Household Substances; Opportunity for Oral Comment

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Opportunity for presentation of oral public comments.

**SUMMARY:** The Commission announces an opportunity for the presentation of oral comments on two issues that were recently raised concerning amendments the Commission is considering to its regulations under the Poison Prevention Packaging Act of 1970 (PPPA) for child-resistant packaging to change the child and adult tests under which child-resistant packaging is evaluated.

Immediately after issuing a rule amending the PPPA test protocol, the Commission was provided with comments on the final rule that had not previously been submitted to the agency during the course of the rulemaking. As a result, the Commission, on February 9, 1995, voted to withhold publication of the final rule in order to consider these new arguments.

The new arguments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for ''normal adults'' to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation.

The Commission has provided that written comments, limited to these two issues, may be submitted until March 7, 1995. In addition, the Commission is providing the opportunity for interested parties to present oral comments, on these two issues alone, limited to a maximum of 10 minutes per commenter.

**DATES:** Oral comments limited to the new issues described below may be presented to the Commission at a Commission hearing beginning at 10:00 a.m., March 16, 1995. A request to present oral comments and an outline or text of the comments must be received by the Commission on or before March 10, 1995.

**ADDRESSES:** The hearing will be held in the Commission's Hearing Room, 4330 East-West Highway, 4th Floor, Bethesda, MD 20814. Requests to present comments and outlines or text of the comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 501, 4340 East-West Highway, Bethesda, MD 20814.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Barone, Ph.D., Project Manager, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

**SUPPLEMENTARY INFORMATION:** The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant (''CR'') packaging. Under the PPPA, the Commission has defined and established standards for such ''special'' packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15, and 1700.20. The Commission has also determined which household substances are required to have the special packaging. 16 CFR 1700.14.

Congress provided that to comply with the special packaging requirements, a package must resist entry by most young children and must be ''not difficult'' for ''normal adults'' to open and properly resecure, within specified time periods. 15 U.S.C. 1471(4). The Commission's existing regulations were developed before the widespread use of CR packaging (''CRP'') and, therefore, without the benefit of the actual use experience and test data that since have become available.

The current adult test protocol, 16 CFR 1700.20(a) (4) and (5), specifies a test panel of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females and 30 percent must be males. The test period is 5 minutes. The adults are given the test package and asked to open and then properly close the package. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and, if appropriate, properly close the package within the 5-minute test period. 16 CFR 1700.15(b)(2).

Although the PPPA has significantly reduced the number of poisonings of young children, deaths and injuries resulting from these accidental ingestions continue to be a substantial problem. For example, in 1993 alone, approximately 140,000 children under 5 years old were treated in hospital emergency rooms for suspected or actual poisonings. Also in 1993, poison control centers received reports of more

than 6,000 poisonings of young children with ''moderate'' or ''major'' (life-threatening) effects. In addition, 42 children died in these accidents in 1992, the last year for which the Commission has complete data.

During the more than 20 years since the PPPA was adopted, the Commission has found that, contrary to requirements of the PPPA, ''normal'' adults of all ages have difficulty using typical CRP. Moreover, the Commission's data indicate that the difficulty in using CRP results in a substantial number of accidental ingestions by young children because adults purchase hazardous substances in non-CRP or disable CRP by leaving the caps off or loose or transferring the package contents to another container.

Accordingly, the Commission sought to address the safety hazard created by difficult to open CRP. On January 19, 1983, the Commission published an advance notice of proposed rulemaking (''ANPR'') outlining its concerns in this area and explaining and seeking comment on possible actions to increase the proper use of CRP, to simplify the test procedures, and to make the test procedures less affected by possible variables. 48 FR 2389.

Older adults typically have the most difficulty with CRP. Therefore, in order to eliminate the currently-marketed CR package designs that are most difficult for ''normal adults'' of all ages to open, the Commission indicated that older adults, ages from 60–75 years, could be substituted for the current panel of 100 18–45-year-olds.

After considering comments on the ANPR and other available information, the Commission proposed amendments to the protocol to address this problem. The proposed amendments would also change the protocol to make the test results more consistent and make the child test easier to perform. The Commission published its initial proposal in the **Federal Register** of October 5, 1990, for public comment. 55 FR 40856.

In addition to the requests for comments in January 1983 and October 1990 noted above, the Commission announced additional comment periods on March 5, 1991, (56 FR 9181) and March 21, 1994 (59 FR 13264). The Commission's staff evaluated the comments received in response to each of these requests.

On December 20, 1994, the Commission was briefed by its staff on the comments on the proposed rule and the changes recommended by the staff. On January 6, 1995, the Commission met and decided to approve the rule recommended by the staff, but to exclude from the scope of the rule those products that must be packaged in metal cans or aerosol form. The staff made appropriate changes to the draft **Federal Register** notice that would issue the final rule, and that notice was approved by the Commission on February 6, 1995.

Immediately thereafter, the Coalition for Responsible Packaging, an industry group, raised concerns about the Commission's action. Most of these concerns already had been addressed in the rulemaking proceeding. Two concerns, however, had not been the subject of specific comments by interested parties in this rulemaking.

Specifically, the new comments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for ''normal adults'' to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation. In addition, the second comment contends that to the extent that child-resistant packages exist that will pass the ''senior friendly'' test approved by the Commission, market forces will be an adequate and more appropriate mechanism to ensure that the more convenient packaging will be adopted.

The Commission wanted to assure that it had an opportunity to consider these new arguments that had not previously been raised in the rulemaking. Accordingly, on February 8, 1995, the Commission voted unanimously to withhold publication of the **Federal Register** notice that would have issued the final rule, to consider the new arguments.

On February 21, 1995, the Commission published a **Federal Register** notice announcing that written comments, limited to these two issues only, could be submitted until March 7, 1995. 60 FR 9654. The Commission has now decided to also receive oral comments on these two new issues. Oral comments on these new issues alone may be presented to the Commission at a Commission hearing beginning at 10:00 a.m., March 16, 1995.

A request to present oral comments and an outline or text of the comments must be received by the Commission on or before March 10, 1995. The oral comments shall be limited to 10 minutes per commenter. The Commission reserves the right to further limit repetitious comments. Comments addressing other issues will not be considered.

The hearing will be held in the Commission's Hearing Room, 4330 East-West Highway, 4th Floor, Bethesda, MD 20814. Requests to present oral comments and outlines or text of the comments shall be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 501, 4340 East-West Highway, Bethesda, MD 20814.

Dated: March 1, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 95–5502 Filed 3–2–95; 11:42 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Parts 404 and 416

**[Regs. No. 4 and 16]**

**RIN 0960–AB73**

### Determining Disability and Blindness; Substantial Gainful Activity Guides

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** These proposed rules reflect amendments to the Social Security Act (the Act) concerning the trial work period and the disability insurance reentitlement period. The proposed rules also clarify certain standards we use to determine whether work is substantial gainful activity and whether an individual is entitled to a trial work period, thereby further explaining how we determine disability under titles II and XVI of the Act.

**DATES:** To be sure that your comments are considered, we must receive them no later than May 5, 1995.

**ADDRESSES:** Comments should be telefaxed to (410) 966–0869 or submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, 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 may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Sandy Bond, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794.

**SUPPLEMENTARY INFORMATION:** We propose to revise §§ 404.1573(c) and 416.973(c) to explain in greater detail what we mean by work under special conditions that take into account an individual's impairments. We have added information found in Social Security Ruling 84–25 to clarify these regulatory provisions.

We propose to amend §§ 404.1574(a) and 416.974(a) to add an expanded description of how we determine whether work performed by an employee is substantial gainful activity, what we mean by subsidized work, and how we determine the value of a subsidy. We explain in more detail: (1) How earnings may show that an employee has done substantial gainful activity; (2) what we consider in determining the amount an employee earns; (3) how we use information from an employer as to whether wages have been subsidized; (4) how we determine the value of subsidized earnings when the value has not been explained adequately by the employer; (5) how we determine the amount of any subsidy that may be provided by organizations that employ individuals with handicaps; and (6) how we evaluate earnings received by persons working in a sheltered or special environment. The changes we are proposing to these regulations reflect Social Security Ruling 83–33.

These proposed rules also clarify how we evaluate earnings from work in sheltered workshops. Under §§ 404.1574(b)(4) and 416.974(b)(4) of our current and proposed regulations, a person working in a sheltered workshop ordinarily will be found not to be doing substantial gainful activity when his or her average monthly earnings are not greater than the specified amounts that ordinarily show that a worker who is not in a sheltered workshop situation is engaging in substantial gainful activity. The average monthly earnings amount currently specified is $500 per month for years after 1989. These sections of the current regulations do not provide rules for evaluating sheltered workshop earnings above the specified average monthly earnings amount because it is our policy that sheltered workshop earnings that exceed the specified average monthly earnings amount must be evaluated under §§ 404.1574(b)(2) and 416.974(b)(2) in the same way as non-sheltered workshop earnings. We propose to amend §§ 404.1574(b)(4) and 416.974(b)(4) to state this policy explicitly.

Our current regulations also specify a lower amount (currently $300 per month for earnings in calendar years after 1989) below which earnings outside a sheltered workshop will ordinarily show that an individual has not engaged in substantial gainful activity. Non-sheltered workshop earnings that are above these amounts but below the upper substantial gainful activity threshold amounts, that is, between $300 and $500 per month for calendar years after 1989, are ordinarily evaluated on a more case-by-case basis. However, there is no such middle ground for evaluating earnings from sheltered workshop employment on a more case-by-case basis because we do not impose separate, lower amounts on sheltered workshop employees as we have done for employees outside of sheltered workshops. If sheltered workshop earnings exceed the upper substantial gainful activity threshold amounts, we ordinarily consider the individual to have engaged in substantial gainful activity. A Federal circuit court decision, *Iamarino* v. *Bowen,* 795 F.2d 59 (8th Cir. 1986), has interpreted our regulations differently. In *Iamarino,* the court held that because our regulations provide a middle ground for evaluating non-sheltered workshop earnings between specified upper and lower limits, we also must provide a middle ground for evaluating sheltered workshop earnings and not presume substantial gainful activity when sheltered workshop earnings exceed the upper substantial gainful activity threshold amounts. Because this was not the intent of our regulations, we propose to revise §§ 404.1574(b)(4) and 416.974(b)(4) to clarify our policy on this point. At the same time we are proposing a minor editorial correction to the heading of paragraph 404.1574(b)(6) to change the word ''of'' to the word ''or.''

We also propose to add new paragraphs 404.1574(d) and 416.974(d) and to revise paragraph 404.1592(b) to provide that volunteer work done under programs mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act shall not be considered in determining whether an individual has performed substantial gainful activity or services in the trial work period. This exclusion is currently stated in Social Security Ruling 84–24 and is required by 42 U.S.C. 5044 and 15 U.S.C. 637.

We also propose to add new §§ 404.1574a and 416.974a to explain how we average earnings or self-employment income to determine if a person has been performing substantial gainful activity and the periods used for averaging. These amendments are based upon Social Security Ruling 83–35 and do not represent a change in policy.

We propose revisions to §§ 404.1575(a) and 416.975(a) to explain the order in which we will apply the three tests used to determine whether self-employed persons have engaged in substantial gainful activity. We also propose to expand the discussion in §§ 404.1575(c) and 416.975(c) of what we mean by substantial income for purposes of determining whether a self-employed person has engaged in substantial gainful activity. These revisions are based upon Social Security Ruling 83–34 and do not represent a change in policy.

We are also proposing to add to §§ 404.1574, 404.1575, 416.974, and 416.975 an explanation, now found in Social Security Ruling 84–25, of how we evaluate periods of brief work activity to determine if they should be considered unsuccessful work attempts. The proposed rules on an unsuccessful work attempt provide, consistent with Social Security Ruling 84–25, that we will not consider work performed at the substantial gainful activity level for more than six months to be an unsuccessful work attempt regardless of why it ended or why earnings were reduced to below the substantial gainful activity earnings level. We propose to amend §§ 404.1574, 404.1575, 416.974, and 416.975 to explain when we will find that substantial work activity that is discontinued or reduced below a specified level is an unsuccessful work attempt. If there is an unsuccessful work attempt, we disregard, for substantial gainful activity determination purposes, brief work attempts that do not demonstrate sustained substantial gainful activity. The criteria for an unsuccessful work attempt differ depending on whether the work effort is for a duration of three months or less or for a duration of between three and six months. These proposed amendments to the regulations on unsuccessful work attempts reflect Social Security Ruling 84–25.

In addition, we propose to add to § 404.1584(d) the substantial gainful activity earnings guidelines for evaluating the work activity of blind persons under title II for the years 1983 through 1994.

We propose to revise the last sentence of current § 404.1592(b) to clarify that we generally do not consider work which is done without remuneration to be ''services'' for purposes of determining when the trial work period has ended if it is done merely as therapy

or training or if it is work usually done in a daily routine around the house or in self-care.

We propose revisions to § 404.1592(d) to explain, consistent with Social Security Ruling 82–52, that a trial work period may not be awarded when a claimant performs work demonstrating the ability to engage in substantial gainful activity within 12 months after the alleged onset of disability and prior to an award of benefits. These revisions, which do not represent a change in policy, are based upon our interpretation of the duration requirement of section 223(d)(1)(A) of the Act and will clarify the issues raised by the courts in *McDonald* v. *Bowen,* 800 F.2d 153 (7th Cir. 1986), amended on rehearing, 818 F.2d 559 (7th Cir. 1987) and *Walker* v. *Secretary of Health and Human Services,* 943 F.2d 1257 (10th Cir. 1991).

The trial work period is a period during which a person who becomes entitled to title II benefits may test his or her ability to work and still be considered disabled. Under section 222(c)(3) of the Act, the trial work period begins with the month an individual ''becomes entitled'' to title II disability benefits and it generally ends after 9 months of work whether or not the 9 months are consecutive. Section 222(c) provides that work performed during the trial work period may not be considered in determining whether ''disability has ceased'' during that period.

In order to be found disabled under section 223(d)(1)(A), an individual must be unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or ''*which has lasted or can be expected to last for a continuous period of not less than 12 months.*'' (Emphasis added.) Under our longstanding interpretation of this provision as reflected in Social Security Ruling 82–52, the duration requirement to establish disability will be found not to have been met and a disability claim denied based on evidence that, within 12 months of the onset of an impairment which prevented substantial gainful activity and prior to an award of benefits, the impairment no longer prevents substantial gainful activity. Under these circumstances, it is not necessary to determine whether earlier in the 12-month period the impairment was expected to prevent the performance of substantial gainful activity for 12 months. We determine whether an impairment is expected to prevent substantial gainful activity for 12 months only when the claim is being adjudicated within 12 months of onset and the evidence shows that the impairment currently prevents substantial gainful activity. We believe that Congress provided that disability can be found based on an impairment which ''can be expected to last'' 12 months simply to provide a means for the Social Security Administration to adjudicate disability claims without having to wait 12 months from the alleged onset of disability, rather than to permit claims to be allowed in the face of evidence that the claimant's impairment did not prevent substantial gainful activity for 12 continuous months.

Because section 222(c) provides that a trial work period shall begin with the month in which a person becomes entitled to title II disability benefits, a claimant who does not become entitled to disability benefits cannot receive a trial work period. Under our interpretation of the duration requirement, a person cannot be found to be under a disability if he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months of onset and prior to an award of benefits. Because the person cannot become entitled to disability benefits in this situation, there can be no trial work period. On the other hand, if a claimant returns to work prior to an award of benefits, but more than 12 months from onset, the duration requirement may be satisfied, the claimant may become entitled to benefits, and the work may be protected by the trial work period even though the work began prior to an award of benefits.

We propose to revise § 404.1592(d)(2) by deleting the rule stating that an individual is not entitled to a trial work period if he or she is receiving disability insurance benefits in a second period of disability for which a waiting period was not required. We are also proposing to revise § 404.1592(e) to show that the trial work period ends when 9 service months are completed within a consecutive 60-month rolling period. Prior to a statutory change, the trial work period would end after 9 service months no matter when they were completed. These two proposed changes reflect section 5112 of Public Law (Pub. L.) 101–508 which took effect on January 1, 1992.

We are proposing to make minor wording changes to § 404.1592(d)(1) to establish consistency with the wording in § 404.1592(d)(2)(i). This rewording does not represent a change in our policy concerning who is entitled to a trial work period.

We are also proposing to add a new § 404.1592(d)(2)(iv) to clarify our policy, consistent with current § 404.1592(e), that an individual is not entitled to a trial work period if he or she demonstrates an ability to engage in substantial gainful activity level work at any time after the onset of the impairment(s) which prevented the individual from engaging in substantial gainful activity but before the month he or she files an application for disability benefits.

We are also proposing to amend § 404.1592a to clarify that the earnings averaging and unsuccessful work attempt concepts do not apply in determining whether to pay benefits for any month during or after the reentitlement period after disability has been determined to have ceased because of the performance of substantial gainful activity. Those concepts do apply during and after the reentitlement period in determining whether disability has ceased due to the performance of substantial gainful activity. This amendment reflects and clarifies Social Security Ruling 83–35 and Social Security Ruling 84–25. This amendment also will clarify the averaging methodology issue raised by the court in *Conley* v. *Bowen,* 859 F.2d 261 (2d Cir. 1988). These proposed rules also provide cross-references to § 404.1592a in the explanations of the averaging and unsuccessful work attempts concepts contained in §§ 404.1574(c), 404.1574a, and 404.1575(d).

These proposed regulations also reflect section 9010 of Pub. L. 100–203 which extended, as of January 1, 1988, the reentitlement period from 15 months to 36 months. During this extended reentitlement period, the title II benefits of a disabled individual whose benefits are stopped because of substantial gainful activity can be reinstated without the need to file a new application if his or her work falls below the substantial gainful activity level. These statutory changes are reflected in proposed amendments to §§ 404.321, 404.325 and 404.1592a.

Public Law 99–643 made a number of changes in the way we handle supplemental security income cases under title XVI of the Act when a disabled person, eligible for supplemental security income benefits, works. Certain supplemental security income recipients who work despite otherwise disabling impairments and begin to earn amounts that would ordinarily represent substantial gainful activity will not have their earnings considered when determining whether they continue to be disabled. Pursuant

to section 4 of Pub. L. 99–643, the trial work period and the reentitlement period no longer apply in title XVI disability cases, and we are accordingly proposing to delete §§ 416.973(f), 416.976(f)(2), 416.992, 416.992a, and 416.994(b)(3)(v), (b)(5)(i), the first paragraph of (b)(6)(i), (b)(6)(i)(D), and (b)(6)(ii) from the regulations and to amend §§ 416.901(m), 416.991, and 416.1331(a) by removing references to the trial work period and reentitlement period. A substantial gainful activity test is still necessary to establish an individual's initial eligibility for SSI benefits based on disability under title XVI.

## Regulatory Procedures

*Paperwork Reduction Act*

These regulations contain reporting requirements in §§ 404.1574(a)(3) and 416.974(a)(3). We would normally seek approval of these requirements (under the Paperwork Reduction Act) from the Office of Management and Budget (OMB). We are not doing so in this situation because we already have clearance from the OMB to collect this information using form SSA–3033 (OMB No. 0960–0483).

The public reporting burden for this collection of information is estimated to average 15 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information. We expect approximately 12,500 employers to complete form SSA–3033 annually, and estimate the total burden to be 3,125 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0483), Washington, DC 20503.

*Regulatory Flexibility Act*

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or title XVI benefits because of disability or blindness.

*Executive Order 12866*

OMB has reviewed these rules and determined they do not meet the criteria for a significant regulatory action under E.O. 12866.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income.)

## List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

## List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Supplemental security income.

Dated: September 6, 1994.

**Shirley S. Chater,**

*Commissioner of Social Security.*

Approved: November 22, 1994.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

Parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

1. The authority citation for subpart D of Part 404 continues to read as follows:

**Authority:** Secs. 202, 203(a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.321 is amended by revising paragraph (c)(3) to read as follows:

### § 404.321 When a period of disability begins and ends.

* * * * *

(c) * * *

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

3. Section 404.325 is revised to read as follows:

### § 404.325 The termination month.

If you do not have a disabling impairment, your termination month is the third month following the month in which your impairment is not disabling even if it occurs during the trial work period or the reentitlement period. If you continue to have a disabling impairment and complete 9 months of trial work, your termination month will be the third month following the earliest month you perform substantial gainful activity or are determined able to perform substantial gainful activity; however, in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a.

*Example:* You complete your trial work period in December 1988. You are then working at the substantial gainful activity level and continue to do so throughout the 36 months following completion of your trial work period and thereafter. Your termination month will be January 1992, which is the 37th month—that is, the first month in which you performed substantial gainful activity after the 36th month following your trial work period.

*Example:* You complete your trial work period in December 1988 but you are not able to work at the substantial gainful activity level until March 1992, 3 months after the last month of your reentitlement period. Your termination month will be June 1992—that is, the third month after the earliest month you performed substantial gainful activity.

4. The authority citation for subpart P of Part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808; sec. 10103 of Pub. L. 101–239, 103 Stat. 2472.

5. Section 404.1573 is amended by revising paragraph (c) to read as follows:

### § 404.1573 General information about work activity.

* * * * *

(c) *If your work is done under special conditions.* Even though the work you are doing is done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. Examples of the special conditions that may relate to your impairment include situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

6. Section 404.1574 is amended by redesignating current paragraph (a)(3) as (a)(6); revising paragraphs (a)(1), (a)(2), newly designated (a)(6), (b)(1), and (b)(4) and the heading of paragraph (b)(6); and adding new paragraphs (a)(3) through (a)(5), (c), and (d) to read as follows:

**§ 404.1574 Evaluation guides if you are an employee.**

(a) * * *

(1) *Your earnings may show you have done substantial gainful activity.* In evaluating an employee's work activity for substantial gainful activity purposes, our primary consideration is the earnings that are derived from the work activity. The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a handicapped person does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity. Paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section explain how we determine the amounts of subsidies.

(3) *Evidence of subsidy from your employer.* We will first ask your employer to tell us if your wages have been subsidized and, if so, the amount of the subsidy. Your employer may set a specific amount as the reasonable value of your services. If the wages you receive exceed the reasonable value of the actual services you performed, we will regard the excess as a subsidy rather than earnings. Any of the following circumstances may indicate the existence of a subsidy:

(i) You work in sheltered employment.

(ii) Childhood disability is involved.

(iii) You have a mental impairment.

(iv) There is a marked discrepancy between the amount of your pay and the value of your services.

(v) You receive an unusual degree of help from others to do your work.

(vi) Your impairment indicates you would need an unusual degree of help from others.

(vii) You are involved in a government-sponsored job training and employment program.

(4) *When your employer does not tell us the value of your subsidy.* If your earnings are subsidized and your employer does not set the amount of the subsidy, or does not adequately explain how the subsidy was determined, we will use the following criteria to determine the amount of your subsidy:

(i) In most instances, we will determine the amount of your subsidy by comparing the time, energy, skills, and responsibility involved in your services with the time, energy, skills, and responsibility involved in the performance of the same or similar work by unimpaired individuals in your community. We will estimate the proportionate value of your services according to the prevailing pay scale for your work.

(ii) In other instances, it may be possible for us to determine the approximate extent of your subsidy based upon other indications of your productivity, such as your need for an unusual degree of supervision or assistance in the performance of simple tasks, the length of time you need to do simple tasks, or how efficiently you are able to do simple tasks.

(5) *Subsidies in organizations that hire the handicapped.* If you work for an organization that hires the handicapped and the organization either operates at a loss or receives charitable contributions or government aid, this does not necessarily establish that your work is subsidized. Our determination of whether or not you receive a subsidy, and the amount of any subsidy you may receive, will depend upon your productivity rather than the financial condition of your employer's business.

(6) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Because persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate their work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines.*—(1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 404.1574a for our rules on averaging earnings.

(2) * * *

(3) * * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we ordinarily will consider that your earnings from this work show that you have engaged in substantial gainful activity if the guides in paragraph (b)(2) of this section are met.

Earnings less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information discussed in paragraph (b)(6) of this section even if those earnings are more than those indicated in paragraph (b)(3) of this section.

(5) * * *

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* * * *

(c) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(3) of this section and you meet the conditions described in paragraphs (c)(2), (3), (4), and (5), of this section. The unsuccessful work attempt criteria do not apply in determining whether payment should be made for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. The reentitlement period is explained in § 404.1592a.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 404.1573(c). We will consider your prior work to be ''discontinued'' if you were out of work at least 30 consecutive days. We will also consider your prior work to be ''discontinued'' if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less which ended, or was reduced below the substantial gainful activity earnings level, because of your impairment or due to the removal of special conditions which took into account your impairment and permitted you to work to be an unsuccessful work attempt.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below the substantial gainful activity earnings level, within 6 months because of your impairment and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, any payments you receive from these programs will not be counted as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. Volunteer work you perform in other programs or any nonvolunteer work you may perform is not excluded under this paragraph. Also, your work will not be excluded if you work for one of the specified programs but are not a volunteer. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. The value of any subsidy must be subtracted and the remainder used to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(6) of this section.

7. A new § 404.1574a is added to read as follows:

**§ 404.1574a When and how we will average your earnings.**

(a) If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity. See § 404.1592a for information on the reentitlement period.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

(d) Earnings will not be averaged in determining whether payment should be made for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. See § 404.1592a for information on the reentitlement period. The following example illustrates what we mean by a significant change in the work pattern of an employee.

*Example:* Mary Holmes began receiving disability insurance benefits in March 1986. In January 1988 she began selling magazines by telephone solicitation, with minimum time being expended, for which she received $125 monthly. In this manner, Mrs. Holmes used up her trial work period during the months of January 1988 through September 1988. It was determined, however, that she had not engaged in substantial gainful activity during her trial work period. Her reentitlement period began October 1988. In December 1988, Mrs. Holmes discontinued her telephone solicitation work to take a course in secretarial skills. In January 1990, she began work as a part-time temporary secretary in a banking firm. Mrs. Holmes worked 20 hours a week, without any subsidy or impairment-related work expenses, at beginner rates. She earned $285 per month in January 1990 and February 1990. In March 1990 she had increased her secretarial skills to journeyman level and was assigned as a part-time private secretary to

one of the vice-presidents of the banking firm. Mrs. Holmes' earnings increased to $525 per month effective March 1990. It was determined that she was engaging in substantial gainful activity in March 1990. A finding of disability cessation was made effective March 1990. Earnings for the period January 1990 and February 1990 were not averaged with the period beginning March 1990, because a significant change in earnings and work activity had taken place and made the two periods unrepresentative of each other. Thus, the earnings of January 1990 and February 1990 could not be averaged with those of March 1990 to reduce March 1990 earnings below the substantial gainful activity level. After disability has been determined to have ceased because of the performance of substantial gainful activity, her earnings cannot be averaged in determining whether payment should be made for any month during or after the reentitlement period. From March 1990 (the month of cessation) on, all of Mrs. Holmes' work activity would then be evaluated on a month-by-month basis.

8. Section 404.1575 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

**§ 404.1575 Evaluation guides if you are self-employed.**

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend upon a number of different factors, such as capital investment and profit sharing agreements. We will generally consider work that you were forced to stop or reduce below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, tests two and three must be considered. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

(b) * * *

(c) *What we mean by substantial income.* Your normal business expenses are deducted from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties which ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 404.1574(b)(2) and 404.1574(b)(3). See § 404.1574a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 404.1574(b)(2); or

(2) It averages less than the amounts described in § 404.1574(b)(2) but it is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), (4), and (5) of this section. The unsuccessful work attempt criteria do not apply in determining whether payment should be made for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. The reentitlement period is explained in § 404.1592a.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below substantial gainful activity because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be discontinued if you were out of work at least 30 consecutive days, or if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, within 6 months because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months an unsuccessful work attempt regardless of why it ended or was reduced below substantial gainful activity.

9. Section 404.1584 is amended by revising paragraph (d) to read as follows:

**§ 404.1584 Evaluation of work activity of blind people.**

* * * * *

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your monthly earnings average more than $334 in 1978; $375 in 1979; $417 in 1980; $459 in 1981; $500 in 1982; $550 in 1983; $580 in 1984; $610 in 1985; $650 in 1986; $680 in 1987; $700 in 1988; $740 in 1989; $780 in 1990; $810 in 1991; $850 in 1992; $880 in 1993; and $930 in 1994. (Sections 404.1574(a)(2), 404.1575(c), and 404.1576 are applicable in determining the amount of your earnings.) Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed in taxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

10. Section 404.1592 is amended by revising the last sentence of paragraph (b), adding a sentence to paragraph (b), and revising paragraphs (d) and (e) to read as follows:

**§ 404.1592 The trial work period.**

(a) * * *

(b) * * * We generally do not consider work done without remuneration to be ''services'' if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. Work as a volunteer in the Federal programs described in § 404.1574(d) is not considered in determining whether you have performed services in the trial work period.

* * * * *

(d) *Who is and is not entitled to a trial work period.* (1) You are generally entitled to a trial work period if you are receiving disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability.

(2) You are not entitled to a trial work period if—

(i) You are entitled to a period of disability but not to disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability; or

(ii) You perform work demonstrating the ability to engage in substantial gainful activity during any required waiting period for benefits; or

(iii) You perform work demonstrating the ability to engage in substantial gainful activity within 12 months of the onset of the impairment(s) which prevented you from performing substantial gainful activity and before the date of the decision awarding you disability benefits; or

(iv) You perform work demonstrating the ability to engage in substantial gainful activity at any time after the onset of the impairment(s) which prevented you from engaging in substantial gainful activity but before the month you file your application for disability benefits.

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance benefits, to child's benefits based on disability or to widow's, widower's, or surviving divorced spouse's benefits based on disability. It cannot begin before the month in which you file your application for benefits and for widows, widowers, and surviving divorced spouses, it cannot begin before December 1, 1980. It ends with the close of whichever of the following calendar months is the earlier:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services if that 9th month is prior to January 1992; or

(2) The 9th month (whether or not the months have been consecutive and whether or not the previous eight months of services were prior to January 1992) in which you have performed services within a rolling 60-month period if that 9th month is after December 1991; or

(3) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled. See § 404.1594 for information on how we decide whether your disability continues or ends.

11. Section 404.1592a is amended by revising paragraphs (a) and (b)(2) to read as follows:

**§ 404.1592a The reentitlement period.**

(a) *General.* The reentitlement period is an additional period after 9 months of trial work during which you may continue to test your ability to work if you have a disabling impairment. You will not be paid benefits for any month after the second month following the month disability ceased due to substantial gainful activity in this period in which you do substantial gainful activity and you will be paid benefits for months in which you do not do substantial gainful activity. (See §§ 404.316, 404.337, 404.352 and 404.401a.) If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period. If your benefits are stopped because you do substantial gainful activity they may be started again without a new application and a new determination of disability if you discontinue doing substantial gainful activity during this period. In determining, for reentitlement benefit purposes, whether you do substantial gainful activity in a month, we consider only your work in or earnings for that month; we do not consider the average amount of your work or earnings over a period of months. When disability has been ceased because of the performance of substantial gainful activity, the unsuccessful work attempt criteria and averaging concepts do not apply in determining whether payments should be made for any particular month during or after the reentitlement period that occurs after the month disability ceased. The unsuccessful work attempt criteria and averaging concepts do apply during and after the reentitlement period in determining whether disability has ceased because of the performance of substantial gainful activity.

(b) * * *

(1) * * *

(2)(i) The last day of the 15th month following the end of your trial work period if you were not entitled to benefits after December 1987; or

(ii) The last day of the 36th month following the end of your trial work

period if you were entitled to benefits after December 1987 or if the 15-month period described in paragraph (b)(2)(i) of this section had not elapsed as of January 1988. (See §§ 404.316, 404.337, and 404.352 for when your benefits end.)

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 1102, 1614(a), 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a), (c) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.901 is amended by revising paragraph (m) to read as follows.

### § 416.901 Scope of subpart.

* * * * *

(m) Our rules on when disability or blindness continues and stops are contained in §§ 416.986 and 416.988 through 416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in determining whether you are still disabled.

3. Section 416.973 is amended by revising paragraph (c) and removing paragraph (f) to read as follows:

### § 416.973 General information about work activity.

(a) * * *

(b) * * *

(c) *If your work is done under special conditions.* Even though the work you are doing is done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. Examples of the special conditions that may relate to your impairment include situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, such as where other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

4. Section 416.974 is amended by redesignating current paragraph (a)(3) as (a)(6); revising paragraphs (a)(1), (a)(2), newly designated (a)(6), (b)(1), and (b)(4); and adding new paragraphs (a)(3) through (a)(5), (c), and (d) to read as follows:

### § 416.974 Evaluation guides if you are an employee.

(a) * * *

(1) *Your earnings may show you have done substantial gainful activity.* In evaluating an employee's work activity for substantial gainful activity purposes, our primary consideration is the earnings that are derived from the work activity. The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a handicapped person does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity. Paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section explain how we determine the amounts of subsidies.

(3) *Evidence of subsidy from your employer.* We will first ask your employer to tell us if your wages have been subsidized and, if so, the amount of the subsidy. Your employer may set a specific amount as the reasonable value of your services. If the wages you receive exceed the reasonable value of the actual services you performed, we will regard the excess as a subsidy rather than earnings. Any of the following circumstances may indicate the existence of a subsidy:

(i) You work in sheltered employment.

(ii) Childhood disability is involved.

(iii) You have a mental impairment.

(iv) There is a marked discrepancy between the amount of your pay and the value of your services.

(v) You receive an unusual degree of help from others to do your work.

(vi) Your impairment indicates you would need an unusual degree of help from others.

(vii) You are involved in a government-sponsored job training and employment program.

(4) *When your employer does not tell us the value of your subsidy.* If your earnings are subsidized and your employer does not set the amount of the subsidy, or does not adequately explain how the subsidy was determined, we will use the following criteria to determine the amount of your subsidy:

(i) In most instances, we will determine the amount of your subsidy by comparing the time, energy, skills, and responsibility involved in your services with the time, energy, skills,

and responsibility involved in the performance of the same or similar work by unimpaired individuals in your community. We will estimate the proportionate value of your services according to the prevailing pay scale for your work.

(ii) In other instances, it may be possible for us to determine the approximate extent of your subsidy based upon other indications of your productivity, such as your need for an unusual degree of supervision or assistance in the performance of simple tasks, the length of time you need to do simple tasks, or how efficiently you are able to do simple tasks.

(5) *Subsidies in organizations that hire the handicapped.* If you work for an organization that hires the handicapped and the organization either operates at a loss or receives charitable contributions or government aid, this does not necessarily establish that your work is subsidized. Our determination of whether or not you receive a subsidy, and the amount of any subsidy you may receive, will depend upon your productivity rather than the financial condition of your employer's business.

(6) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Because persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate their work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines.*—(1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 416.976, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b) (2), (3), (4), and (6) of this section. See § 416.974a for our rules on averaging earnings.

(2) * * *

(3) * * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we ordinarily will consider that your earnings from this work show that you have engaged in substantial gainful activity if the guides in paragraph (b)(2) of this section are met. Earnings less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information discussed in paragraph (b)(6) of this section even if those earnings are more than those indicated in paragraph (b)(3) of this section.

(5) * * *

(6) * * *

(c) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(3) of this section and you meet the conditions described in paragraphs (c) (2), (3), (4), and (5), of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 416.973(c). We will consider your prior work to be ''discontinued'' if you were out of work at least 30 consecutive days. We will also consider your prior work to be ''discontinued'' if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less which ended, or was reduced below the substantial gainful activity earnings level, because of your impairment or due to the removal of special conditions which took into account your impairment and permitted you to work, to be an unsuccessful work attempt.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below the substantial gainful activity earnings level, within 6 months because of your impairment and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, any payments you receive from these programs will not be counted as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or Small Business Act. Programs explicitly mentioned in these Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. Volunteer work you perform in other programs or any nonvolunteer work you may perform is not excluded under this paragraph. Also, your work will not be excluded if you work for one of the specified programs but are not a volunteer. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis

under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. The value of any subsidy must be subtracted and the remainder used to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(6) of this section.

5. A new section 416.974a is added to read as follows:

**§ 416.974a When and how we will average your earnings.**

(a) To determine your initial eligibility for benefits, we will average any earnings you make during the month you file for benefits and any succeeding months to determine if you are doing substantial gainful activity. If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

6. Section 416.975 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

**§ 416.975 Evaluation guides if you are self-employed.**

(a) *If you are a self-employed person.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend upon a number of different factors, such as capital investment and profit sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, tests two and three must be considered. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

(b) * * *

(c) *What we mean by substantial income.* Your normal business expenses are deducted from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties which ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 416.976. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 416.974(b)(2) and 416.974(b)(3). See § 416.974a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 416.974(b)(2); or

(2) It averages less than the amounts described in § 416.974(b)(2) but it is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.* (1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d) (2), (3), (4), and (5) of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below substantial gainful activity because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be discontinued if you were out of work at least 30 consecutive days, or if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work.

(4) *If you work between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial

gainful activity, within 6 months because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) Your work was performed during a period of temporary remission of your impairment; or

(iv) Your work was done under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months an unsuccessful work attempt regardless of why it ended or was reduced below substantial gainful activity.

**§ 416.976 [Amended]**

7. Section 416.976 is amended by removing paragraph (f)(2) and by redesignating paragraphs (f)(3) through (f)(6) as paragraphs (f)(2) through (f)(5), respectively.

**§ 416.991 [Amended]**

8. Section 416.991 is amended and by removing the parenthetical sentence immediately preceding the example.

**§ 416.992 [Removed and Reserved]**

9. Section 416.992 is removed and reserved.

**§ 416.992a [Removed and Reserved]**

10. Section 416.992a is removed and reserved.

11. Section 416.994 is amended by removing paragraph (b)(3)(v) and revising paragraphs (b)(5) and (b)(6) to read as follows:

**§ 416.994 How we will decide whether your disability continues or ends, disabled adults.**

* * * * *

(b) * * *

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement is related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvements applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments (in combination) are severe (see § 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with § 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

(6) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the following month—

(i) The month the evidence shows that you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(ii) The month the evidence shows that you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(iii) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, and we expected your impairment(s) to improve (see § 416.991);

(iv) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4)(iv) of this section applies;

(v) The first month in which you were told by your physician that you could return to work provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence; or

(vi) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (b)(4)(ii) of this section applies.

* * * * *

12. The authority citation for Subpart M of Part 416 continues to read as follows:

**Authority:** Secs. 1102, 1611–1615, 1619 and 1631 of the Social Security Act; 42 USC 1302, 1382–1382d, 1382h, 1383.

13. Section 416.1331 is amended by revising paragraph (a) to read as follows:

**§ 416.1331 Termination of your disability or blindness payments.**

(a) *General.* The last month for which we can pay you benefits based on disability is the second month after the first month in which you are determined to no longer have a disabling impairment (described in § 416.911). (See § 416.1338 for an exception to this rule if you are participating in an appropriate vocational rehabilitation program, and § 416.261 for an explanation of special benefits to which you may be entitled.) The last month for which we can pay you benefits based on blindness is the second month after the month in which your blindness ends (see § 416.986 for when blindness ends). You must meet the income, resources, and other eligibility requirements to receive any of the benefits described in this paragraph. We will also stop payment of your benefits if you have not cooperated with us in getting information about your disability or blindness.

* * * * *

[FR Doc. 95–5171 Filed 3–3–95; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD05–94–092]**

## Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Beach Thorofare, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** At the request of the National Railroad Passenger Corporation (AMTRAK), the Coast Guard is considering a change to the regulations governing operation of the AMTRAK/New Jersey Transit Rail Operation (NJTRO) drawbridge across the Beach Thorofare, at New Jersey Intracoastal Waterway, mile 68.9, at Atlantic City, New Jersey, by permitting the bridge to be operated remotely from AMTRAK's Philadelphia office. This proposal is being made in an effort to combine bridge tender and dispatcher positions, enhance rail safety and operation, and reduce operating costs. This action should relieve AMTRAK of the burden of having to man the bridge constantly to open the draw, and should still provide for the reasonable needs of navigation.

**DATES:** Comments must be received on or before June 5, 1995.

**ADDRESSES:** Comments may be mailed to Commander (ob), Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004–5073.

Any comments received will become part of this docket and will be available for inspection and copying by appointment at Bldg. 135A, Governors Island, New York 10004–5073. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Fridays, except Federal holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Gary Kassaf, Bridge Administrator—NY, Fifth Coast Guard District, (212) 668–7069, 668–7021, or 668–7165.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–092), and the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

### Drafting Information

The drafters of this notice are Mr. J. Arca, Fifth Coast Guard District, Bridge Branch—NY, Project Officer, and LCDR C.A. Abel, Fifth Coast Guard District Legal Office, Project Attorney.

### Background and Purpose

A permit was issued by the Coast Guard on December 20, 1988, to replace and slightly raise the superstructure of the Beach Thorofare bridge. The new drawbridge provides a vertical clearance of 4 feet at mean high water and 9 feet at mean low water when in the closed position. Prior to its rehabilitation in 1988, the old bridge was left in the open position and unused for 5 to 10 years. However, the regulations governing operation of this bridge require that the bridge open on signal from 11 p.m. to 6 a.m. From 6 a.m. to 11 p.m., the draw is required to open on signal from 20 minutes to 30 minutes after each hour and remain open for all waiting vessels. As a result of the rehabilitation and replacement work, the bridge now operates according to the published regulations, and AMTRAK seeks to operate the bridge remotely from its Philadelphia office.

The Beach Thorofare section of the New Jersey Intracoastal Waterway is used primarily by recreational power boats ranging in length from eighteen (18) to thirty-eight (38) feet. The bridge is required to open for vessel traffic infrequently during the winter months. The number of openings increases during the normal season boating season. However, the number of openings is not excessive. During the period from February 1994 through June 1994, drawlogs for the Beach Thorofare Bridge show the bridge averaged 1 opening per day in February; 1 or 2 openings per day in March; 2 openings per day in April; 6 openings per day in May; and 7 openings per day in June. During the same 5 month period, data provided by AMTRAK shows the number of trains per month crossing the bridge in both directions remained fairly constant, averaging between 900 and 1000 trains per month. The vast majority of these trains are passenger/shuttle type trains transporting persons wishing to visit Atlantic City, New Jersey. Train traffic across the bridge is proportionately much heavier than waterway traffic requiring openings of the bridge. Because of the relatively few requests for bridge openings, AMTRAK

would like to combine the bridge tender and train dispatcher positions in its Philadelphia office. By controlling openings of the bridge and movement of trains across the bridge from one location, AMTRAK can reduce operating costs and still closely monitor operations at the bridge.

The Coast Guard has no record of any vessel allisions with this bridge. The vessels that do use this waterway are relatively small, and it is unlikely that they could create major damage to the bridge even if a vessel/bridge allision did occur. Therefore, safety does not appear to be a concern in the evaluation of this request.

The proposed change establishes procedures and criteria for remote operation of the drawbridge, while providing mariners warning of this operation and a 24 hour-a-day point of contact for normal or emergency operation.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the Beach Thorofare Bridge, nor will it change the present opening schedule. Rather, it will permit the bridge owner to operate the bridge remotely.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concern'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impacts of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

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

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.733(e) is revised to read as follows:

### § 117.733 New Jersey Intracoastal Waterway

* * * * *

(e) The draw of the AMTRAK New Jersey Transit Rail Operation (NJTRO) automated railroad swing bridge, mile 68.9, across Beach Thorofare at Atlantic City shall operate as follows:

(1) Open on signal from 11 p.m. to 6 a.m. From 6 a.m. to 11 p.m., the draw shall open on signal from 20 minutes to 30 minutes after each hour and remain open for all waiting vessels.

(2) Opening of the draw span may be delayed for ten minutes except as provided in § 117.31(b). However, if a train is moving toward the bridge and has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) When the bridge is not tended locally and/or is operated from a remote location, sufficient, closed-circuit TV cameras shall be operated and maintained at the bridge site to enable the remotely located bridge/train controller to have full view of both river traffic and the bridge.

(4) Radiotelephone Channel 13 (156.65 Mhz) and 16 (156.8 Mhz) VHF–FM, shall be maintained and utilized to facilitate communication in both remote and local control locations. The bridge also shall be equipped with directional microphones and horns to receive and deliver signals to vessels within a mile that are not equipped with radiotelephones.

(5) Whenever the remote control system equipment is partially disabled or fails for any reason, the bridge shall be physically tended and operated from local control. Personnel shall be dispatched to arrive at the bridge as soon as possible but not more than one hour after malfunction or inoperation of the remote system. Mechanical by-pass and override capability for remote operation shall be provided and maintained.

(6) When the draw is opening, being closed, or is closed, yellow flashing lights located on the ends of the center piers shall be displayed continuously until the bridge is in the fully open position.

* * * * *

3. Appendix A to part 117 is amended by adding a new entry under the State of New Jersey in alphabetical order to read as follows: New Jersey Intracoastal Waterway.

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| * * | * | * | * | * | | * |
| NEW JERSEY | | | | | | |
| * * | * | * | * | * | | * |
| New Jersey Intracoastal Waterway. (Beach Thorofare) | 68.9 | Atlantic City | AMTRAK | WXZ 528. | 13 | 13 |
| * * | * | * | * | * | | * |

Dated: February 3, 1995.

**W.J. Ecker,**

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

[FR Doc. 95–5386 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 95–3–6638b; FRL–5160–1]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that concern the control of volatile organic compound (VOC) emissions from in-situ combustion well vents. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the 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 this 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. 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 April 5, 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 rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California 93721.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

**SUPPLEMENTARY INFORMATION:** This document concerns San Joaquin Valley Unified Air Pollution Control District Rule 4407, In-Situ Combustion Well Vents, submitted to EPA on July 13, 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: February 8, 1995.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 95–5343 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–W

### 40 CFR Part 52

**[IL99–01–6621, IN46–01–6622, MI33–01–6626, WI47–01–6627; FRL–5165–1]**

### Approval of a Section 182(f) Exemption; Illinois, Indiana, Michigan, and Wisconsin

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

**ACTION:** Proposed rule.

**SUMMARY:** On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the EPA a petition (the petition) for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), are petitioning for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of oxides of nitrogen ($NO_x$). In the Lake Michigan Ozone Study (LMOS) modeling domain, the RACT requirements apply to major stationary sources of $NO_x$ located in areas currently classified as moderate and above nonattainment for ozone. The NSR requirements apply to major stationary sources of $NO_x$ located in areas currently classified as marginal and above nonattainment for ozone. The petition also seeks an exemption from the transportation and general conformity requirements for $NO_x$ in all ozone nonattainment areas in the modeling domain. Although the petition does not specifically request an exemption from the Inspection/Maintenance (I/M) program requirements, the approval of the petition will impact the I/M $NO_x$

requirements for ozone nonattainment areas in the modeling domain. In this rulemaking, EPA is proposing to approve the petition based upon its demonstration that additional $NO_x$ reductions would not contribute to attainment of the National ambient air quality standard (NAAQS) for ozone in any nonattainment area within the LMOS modeling domain. The EPA is reserving the right, however, to reverse this approval if subsequent modeling, such as may be available through the final attainment demonstration, or any other subsequent modeling data demonstrate an ozone attainment benefit from $NO_x$ emission controls.

**DATES:** Comments on the petition and on the proposed EPA action must be received by April 5, 1995.

**ADDRESSES:** Written comments shall be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the petition are available for inspection at the following address: (It is recommended that you telephone Daniel Meyer at (312) 886–9401, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Daniel Meyer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. (312) 886–9401.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Part D of the Act establishes the State Implementation Plan (SIP) requirements for nonattainment areas. Subpart 2, part D of the Act establishes additional provisions for ozone nonattainment areas. At section 182(b)(2) of this subpart, the Act requires the application of RACT regulations for major stationary volatile organic compound (VOC) sources located in moderate and above ozone nonattainment areas as well as in ozone transport regions. States are required to submit RACT regulations by November 15, 1992 and sources are required to achieve compliance with these RACT regulations by May 31, 1995. At section 182(a)(2)(C), the Act requires the application of NSR regulations for major new or modified VOC sources located in marginal and above ozone nonattainment areas as well as in ozone transport regions. States are required to adopt revised NSR regulations by November 15, 1992. At section 182(f), the Act requires States to apply the same requirements to major stationary sources of $NO_x$ as are applied to major stationary sources of VOC. Therefore, the RACT and NSR requirements also apply to major stationary sources of $NO_x$.

The EPA ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 55628), November 25, 1992 ($NO_x$ Supplement), discusses in detail the section 182(f) requirements. For sources outside of an ozone transport region, these requirements do not apply to $NO_x$ sources if: (1) The EPA determines that net air quality benefits are greater in the absence of $NO_x$ emissions reductions; or (2) the EPA determines that additional reductions of $NO_x$ emissions would not contribute to attainment of the NAAQS for ozone in the area. Where any one of the tests is met (even if the other test is failed), the $NO_x$ RACT and NSR requirements of section 182(f) would not apply.

In addition to determining the applicability of $NO_x$ reductions under RACT and NSR, the section 182(f) exemption process may also determine the applicability of $NO_x$ reductions under the Act's conformity requirements, which assure conformity with approved SIPs. The general and transportation conformity requirements are found at section 176(c) of the Act. The conformity requirements apply on an areawide basis in all nonattainment areas, including the nonclassifiable ozone nonattainment areas. The EPA's transportation conformity final rule [1] and general conformity final rule [2] reference the section 182(f) exemption process as a means for exempting an affected area from $NO_x$ conformity requirements. The approval of an areawide section 182(f) petition will exempt marginal and above ozone nonattainment areas from the $NO_x$ conformity requirements of the Act. See the May 27, 1994, memorandum entitled, ''Section 182(f) Nitrogen Oxides ($NO_x$) Exemptions—Revised Process and Criteria,'' from John Seitz, Director of the Office of Air Quality Planning and Standards.

Under the I/M program final rule (57 FR 52950), November 5, 1992, the section 182(f) petition is also referenced to determine applicability of $NO_x$ reductions. The I/M program requirement for moderate ozone nonattainment areas is found at section 182(b)(4), and the I/M program requirement for serious and above ozone nonattainment areas is found at section 182(c)(3). Basic I/M testing programs must be designed such that no increase in $NO_x$ occurs as a result of the program. If a petition is granted to an area required to implement a basic I/M program, the basic I/M $NO_x$ requirement may be omitted. Enhanced I/M testing programs must be designed to reduce $NO_x$ emissions consistent with the enhanced I/M performance standard. If a petition is granted to an area required to implement an enhanced I/M program, the $NO_x$ emission reductions are not required, but the program must be designed to offset $NO_x$ emission increases resulting from the repair of vehicles due to hydrocarbon and carbon monoxide failures.

The EPA believes that all approvable petitions should be approved only on a contingent basis. As described in the $NO_x$ Supplement, the EPA would rescind a $NO_x$ petition in cases where $NO_x$ reductions were later found to be beneficial in the area's attainment demonstration. Therefore, a modeling-based exemption would last only as long as the area's modeling continued to demonstrate attainment without the additional $NO_x$ reductions required by section 182(f). The EPA would also rescind the exemption if other data, including new photochemical grid modeling, demonstrates an ozone attainment benefit from $NO_x$ emission controls. If EPA later determines that $NO_x$ reductions are beneficial in an area initially exempted, the area would be removed from exempt status and would be required to adopt the $NO_x$ RACT and NSR rules, except to the extent that the new modeling shows $NO_x$ reductions to be ''excess reductions.'' In addition, the area would no longer be exempt from the $NO_x$ reduction requirements under the Act's I/M and conformity programs. In the rulemaking action rescinding the exempt status, the EPA would specify a schedule for a State to adopt the $NO_x$ RACT and NSR rules and for sources to comply with the $NO_x$ RACT emission limits. In addition, the rulemaking action would also describe how a State must comply with the I/M and conformity program requirements. For conformity, the effect of a recision is that subsequent Federal actions will

[1] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. or the Federal Transit Act'' November 24, 1993 (58 FR 62188).

[2] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule'' November 30, 1993 (58 FR 63214).

have to demonstrate that they conform, although projects that had begun because of the exemption would be allowed to go forward. See ''Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions,'' 59 FR 31238 (June 17, 1994).

If EPA grants a petition for an exemption from the section 182(f) $NO_x$ requirements, a State may impose $NO_x$ restrictions for other reasons. If, however, the EPA grants the petition based upon a finding that $NO_x$ reductions are counterproductive, the State must justify how the SIP continues to be adequate for achieving ozone attainment given its $NO_x$ reductions. Although a section 182(f) petition may determine the applicability of SIP requirements pertaining to $NO_x$ emission reductions and controls, the petition is not a SIP, nor is it a revision to a SIP. Therefore, a petition is not required to undergo a public hearing, nor must a petition be submitted by a Governor of a State or his designee. See ''Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions,'' 59 FR 31238 (June 17, 1994).

## II. Summary of Submittal

The LMOS is a regional modeling project that was initiated by the States of Illinois, Indiana, Michigan, and Wisconsin, with assistance from the EPA, to deal with the ozone problem in the Lake Michigan air basin as a whole. A major goal of the study is to develop a comprehensive modeling system that the four States would use to support a regional control strategy that would be implemented through revisions to their ozone attainment SIPs. The Lake Michigan air basin, which constitutes the LMOS modeling domain, contains a number of generally contiguous nonattainment areas including several major urban nonattainment areas, including Chicago, Milwaukee, and Grand Rapids, and many smaller, less-dense nonattainment areas generally downwind of the large urban centers. The entire domain is affected by ozone concentrations that are transported into the area. These ozone concentrations are estimated to be as high as 80–100 parts per billion (ppb). Additionally, within the domain itself, ozone precursor emissions generated in the urban centers upwind travel downwind, resulting in significant downwind ozone levels. It is because of these meteorological characteristics that the ozone problem in the Lake Michigan area is considered to be a very broad regional phenomenon requiring a regional solution. Consequently, the preliminary control strategy simulations pursued in the ozone study consisted of an approach that assumed across-the-board reductions in VOC and $NO_x$ emissions throughout the region as a whole in order to provide information on the most effective control path to pursue toward attainment.

The petition, which is part of a July 13, 1994 submittal from LADCo to the EPA, seeks to exempt major stationary sources of $NO_x$ within ozone nonattainment areas classified as marginal and above in the LMOS modeling domain from the RACT requirements of section 182(b)(2) and the NSR requirements under section 182(a)(2)(C). The petition for an exemption from $NO_x$ RACT and NSR applies to the following counties: (1) Within Illinois, the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will; (2) within Indiana, the Counties of Elkhart, Lake, Porter, and St. Joseph; (3) within Michigan, the Counties of Kent, Muskegon, and Ottawa; and (4) within Wisconsin, the Counties of Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington, and Waukesha.

Pursuant to 40 CFR part 93, subpart A; 40 CFR part 51, subpart T; 40 CFR part 93, subpart B; and 40 CFR part 51, subpart W, the petition seeks an exemption from the transportation and general conformity requirements for $NO_x$ in all ozone nonattainment areas within the LMOS modeling domain. The areas include the above Counties as well as the following Michigan Counties: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillside, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawasse, and Van Buren.

Pursuant to 40 CFR part 51, subpart S, an approved petition allows for an exemption from the $NO_x$ requirements of the basic I/M requirements for moderate ozone nonattainment areas. These Counties include: (1) Within Indiana, the Counties of Elkhart, and St. Joseph; (2) within Michigan, the Counties of Kent, Muskegon, and Ottawa; and (3) within Wisconsin, the Counties of Door, Kewaunee, Manitowoc, Sheboygan, Walworth, Washington, and Waukesha. Also pursuant to subpart S, an approved petition allows for an exemption from the $NO_x$ requirements of the enhanced I/M requirements for serious and above ozone nonattainment areas. These Counties include: (1) Within Illinois, the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will; (2) within Indiana, the Counties of Lake and Porter; and (3) within Wisconsin, the Counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

The December 1993 Office of Air Quality Planning and Standards guidance document, ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f),'' (Guideline), recommends the use of photochemical grid modeling for testing the contribution of $NO_x$ emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions; (2) substantial $NO_x$ reductions; and (3) both VOC and $NO_x$ reductions. If the areawide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the section 182(f) $NO_x$ emissions reduction requirements may not apply.

As noted above, section 182(f)(1) of the Act provides that the new $NO_x$ requirements of subpart 2 of part D of the Act shall not apply for the ozone nonattainment areas within the LMOS modeling domain if, among other tests, EPA determines that additional $NO_x$ emission reductions would not contribute to attainment of the ozone standard in the ozone nonattainment areas covered by the petition. The States' have utilized the Urban Airshed Model (UAM-V), a photochemical grid model approved by EPA for LADCo's section 182(f) and attainment demonstrations, to demonstrate that $NO_x$ emission reductions would not contribute to attainment. To conduct the modeling analysis, LADCo followed these steps: (a) Emissions were projected to the year 1996 (the attainment deadline for the moderate nonattainment areas) and to the year 2007 (the attainment deadline for the severe nonattainment areas) from the 1990 base year; (b) a 40 percent VOC emission reduction beyond that achieved as a result of emission controls mandated by the Act was assumed to be necessary to attain the ozone standard in the LMOS modeling domain; (c) a 40 percent $NO_x$ emission reduction beyond the projected emission levels was assumed for all anthropogenic $NO_x$ emissions; (d) a 40 percent VOC emission reduction and a 40 percent $NO_x$ reduction beyond projected emission levels were assumed for all anthropogenic VOC and $NO_x$ emissions;

and (e) the ozone modeling results for (b), (c), and (d) were compared considering the domain-wide peak ozone concentrations and temporal and spatial extent of ozone concentrations above 120 ppb. In addition, ozone impacts resulting from increasing new source growth $NO_x$ emissions were analyzed.

For all modeled days using 1996 and 2007 conditions, domain-wide peak ozone concentrations for ''VOC-only'' controls were found to be lower than or equal to those for ''$NO_x$-only'' controls or those for ''VOC plus $NO_x$'' controls. The ''VOC-only'' control scenario leads to the smallest areas with predicted peak ozone concentrations exceeding 120 ppb. In addition, the $NO^{T2x}$ point source growth is not expected to exacerbate the nonattainement problem.

## III. Analysis of Submittal

As stated earlier in this document, for purposes of their $NO_x$ exemption submission, the LMOS States elected to rely on the statutory test provided in section 182(f)(1)(A), which requires a demonstration that $NO_x$ reductions would not contribute to attainment of the ozone NAAQS ''in the area''. Under the EPA Guideline, this would ordinarily mean that the demonstration should show that in a single nonattainment area $NO_x$ emissions reductions from sources in the same nonattainment area would not contribute to attainment. However, the EPA Guideline goes on to encourage petitioners relying on modeling under the contribute to attainment test to include consideration of the entire modeling domain for two key reasons. First, because the test focuses on the effects of $NO_x$ reductions on attainment, to fully realize those effects, the attainment control strategy often needs to extend beyond the geographic bounds of the designated nonattainment area. This is especially warranted for the nonattainment areas in the Lake Michigan air basin given the meteorological indications noted previously. Second, when photochemical grid modeling is utilized for this demonstration, it is generally advisable, as a technical matter, to use a modeling domain larger than the designated nonattainment area in order to consider multi-day episodes, to establish realistic boundary conditions, and to accommodate the geometry of the model grid cells. Again, as noted previously, the location of the nonattainment areas and the meteorology characteristic of the Lake Michigan area made it reasonable for the LMOS study to analyze domain-wide precursor effects rather than attempting to identify such effects in each individual nonattainment area. Because of this, the modeling protocol lacks the type of precision that would make it capable, for example, of analyzing particularized, individual local area effects. However, a region-wide modeling assessment may—and, in the case of the LMOS modeling, clearly did—include consideration of general, directional effects in specific areas.

Review of the modeling results by EPA show a very definite directional signal that general, across-the-board $NO_x$ emission reduction controls in the ozone nonattainment areas throughout the LMOS modeling domain would not contribute to attainment, but, in fact, would exacerbate peak ozone concentrations. Specifically, the LMOS modeling runs demonstrate that reductions in $NO_x$ emissions result in increases in the domain-wide peak ozone concentrations, in the areal coverage of hours greater than 120 ppb (the current ozone standard), and in the number of hours greater than 120 ppb. Nitrogen oxide reductions also increased hourly ozone concentrations within and immediately downwind of the major urban areas of Chicago, Milwaukee, Gary, and Grand Rapids. Additional model sensitivity tests involving alternative VOC:$NO_x$ emissions ratios and alternative photolysis rates produced similar results. In addition, independent analyses of the LMOS field data also conclude that $NO_x$ controls would increase ozone concentrations in and downwind of Chicago. In light of all this evidence in support of the conclusion that application of $NO_x$ controls in the nonattainment areas throughout the LMOS domain would be counterproductive, EPA believes the LADCo States have made an acceptable case for approval of their $NO_x$ exemption petition.

However, data provided to the EPA to date by LADCo indicate that some adjustments in the modeling results may be expected when certain aspects of the modeling are subject to more detailed inputs. Specifically, the LMOS analysis projected emissions for conditions expected in the attainment years of 1996 (for Moderate areas) and 2007 (for Severe areas with a design value between 0.190 and 0.280 ppm). However, the analysis did not rely on source category-specific emission projection factors, but instead used simple, region-wide adjustment factors for point, area, and mobile (motor vehicular) sources to account for both known controls (i.e., 15 percent reasonable further progress and other mandatory Clean Air Act Amendment controls) and for growth. Therefore, some changes in the modeling results are to be expected if area-specific and source category-specific emission projection factors are used. And, in fact, these more detailed projection factors will be used in the final demonstration of attainment for the LMOS domain. It should be noted, however, that nothing in the data presented, and in the analysis of that data, leads EPA to believe either that these adjusted modeling results will reverse the directional signal provided by the modeling done to date, or alter the preliminary conclusion that $NO_x$ reductions in the nonattainment areas throughout the domain would not contribute to attainment of the ozone NAAQS.

Finally, although this document earlier points out that the version of the photochemical grid model utilized in the LMOS study (UAM-V) was approved by EPA for LADCo's section 182(f) and attainment demonstrations, it is noted here by EPA that the Lake Michigan States and LADCo had not completed the appropriate validation process for the UAM-V modeling system utilized in the LMOS study at the time the $NO_x$ exemption petition was submitted. In this regard, the EPA Guideline states that an assessment of the model's performance and a copy of the modeling protocol should be included in States' $NO_x$ exemption analysis ''for informational purposes.'' On the basis of that guidance, the use of the UAM-V model by LADCo to support the section 182(f) ''contribute to attainment'' test is acceptable. In any event, however, the validation process has now been completed, and a model validation report has been submitted to EPA by LADCo. With respect to the emission projection factors, it is also likely that some adjustments in the modeling results may be expected based on the completed validation process. However, as in the previous case, nothing in the existing modeling data, or in the analyses, leads EPA to believe that any subsequent adjustments would be sufficient to reverse the directional indication that $NO_x$ reductions in the nonattainment areas throughout the LMOS modeling domain would not contribute to attainment of the ozone NAAQS.

In summary, then, the EPA believes that the modeling data contained in the LADCo $NO_x$ exemption petition demonstrates that, for the nonattainment areas throughout the LMOS domain in general, additional reductions of $NO_x$ would not contribute to attainment of the ozone standard. However, other data submitted to EPA

offer the possibility that subsequent adjustments to the modeling results due to the completed model validation process, as well as the inclusion of area-specific and source category-specific emissions projection factors, may result in changes that could alter the conclusions presently reached with respect to the effects of $NO_x$ reductions on nonattainment areas within the domain. Although this result seems highly unlikely, it does remain a possibility. In light of the above, EPA has concluded that the LADCo exemption demonstration is adequate to support the granting of a $NO_x$ waiver. Therefore, pursuant to section 182(f)(3) of the Act, and based on the results provided by the modeling data that is available at this time, and on the modeling analyses' conformance to the criteria contained in relevant EPA guidance, including the Guideline, the EPA proposes to approve the LADCo $NO_x$ exemption petition. The EPA reserves the right to reverse this approval to the extent necessary if subsequent modeling results, such as may be available through the final attainment demonstration submittal, or through any other subsequent modeling data, demonstrate that additional $NO_x$ emission reductions will contribute to attainment of the ozone NAAQS in all or part of any nonattainment areas within the LMOS modeling domain. For a more detailed analysis of the petition, please see the August 22, 1994 technical support document entitled ''Technical Review of a Four State Request for a Section 182(f) Exemption from Oxides of Nitrogen ($NO_x$) Reasonably Available Control Technology (RACT) and New Source Review (NSR) Requirements.''

## IV. Implication of Action

The EPA is proposing to approve the LADCo petition. If granted, the approval will exempt ozone nonattainment areas in the LMOS modeling domain from any applicable $NO_x$ requirements set forth in the Act, such as those for $NO_x$ RACT, NSR, I/M, and conformity. Therefore, the sanctions clocks currently underway for the applicable ozone nonattainment areas in the States of Illinois, Indiana, Michigan, and Wisconsin for failing to submit a complete $NO_x$ RACT SIP will be stopped upon final approval of the exemption. The EPA reserves the right, however, to reverse the proposed approval if subsequent modeling, such as may be available through the final attainment demonstration, or any other subsequent modeling data, demonstrate an ozone attainment benefit from $NO_x$ emission controls within all or part of the ozone nonattainment areas within the LMOS modeling domain. In that case, the EPA would notify the States that the exemption no longer applies for the relevant nonattainment areas, and would also provide notice to the public in the **Federal Register**.

There are also consequences if the EPA disapproves the petition. The requirement to submit $NO_x$ RACT rules and implement the NSR, conformity, and I/M $NO_x$ requirements for the LMOS modeling domain area remain in place. Therefore, the sanctions clocks currently underway for the applicable ozone nonattainment areas in the States of Illinois, Indiana, Michigan, and Wisconsin for failing to submit a complete $NO_x$ RACT SIP will not be stopped. As provided under section 179(a) of the Act, if the State did not make a complete submittal within 18 months after the finding of failure to submit, the EPA would be required to impose the requirements to provide two-to-one NSR offsets. If the State had not corrected its deficiency within 6 months after imposing the offset sanction, the EPA would impose a second sanction related to Federal highway funding restrictions. Any sanction the EPA imposes must remain in place until the EPA determines that the State has corrected the deficiency. In addition, the finding of failure to submit would trigger the 24-month clock for the EPA to impose a Federal Implementation Plan as provided under section 110(c)(1) of the Act.

## V. Request for Public Comments

Interested parties are invited to submit comments on this petition and on EPA's proposed rulemaking action. Public comments received by the date indicated above will be considered in the development of the final rule.

## VI. Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866. 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, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Because any type of approval of a section 182(f) petition 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.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 27, 1995.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 95–5402 Filed 3–3–95; 8:45 am]

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## 40 CFR Part 52

**[MA–30–1–6846b; A–1–FRL–5158–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC RACT for Brittany Dyeing and Printing

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision consists of a reasonably available control technology (RACT) Plan Approval for controlling volatile organic compound (VOC) emissions from Brittany Dyeing and Printing Corporation of New Bedford, Massachusetts. In the final rules section of this **Federal Register**, EPA is approving the Massachusetts' 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. 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:** Comments must be received on or before April 5, 1995.

**ADDRESSES:** Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Arnold, (617) 565–3166.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 9, 1995.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 95–5351 Filed 3–3–95; 8:45 am]

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## 40 CFR Part 52

**[TX–47–1–6705b; FRL–5161–6]**

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing Sulfur Dioxide in Harris County

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA in this action proposes to approve a revision to the Texas State Implementation Plan (SIP) to include Agreed Orders limiting sulfur dioxide ($SO_2$) allowable emissions at certain nonpermitted facilities in Harris County, Texas. 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 rule. If the 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 action. 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 April 5, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant 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 twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather,Planning Section (6T-AP), Air Programs Branch (6T-A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733,telephone (214) 665–7258.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule of the same title which is located in the final rules section of this **Federal Register**.

Dated: February 8, 1995.

**William B. Hathaway,**

*Acting Regional Administrator.*

[FR Doc. 95–5353 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–F

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## 40 CFR Part 85

**[FRL–5164–7]**

## Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

**SUMMARY:** The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

**DATES:** Comments must be submitted on or before April 20, 1995.

**ADDRESSES:** Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category V), Room M–1500, 401 M Street SW., Washington, DC 20460.
2. Anthony Erb, Technical Support Branch, Manufacturers Operations Division (6405J), 401 M Street SW., Washington, DC 20460.

This Engelhard notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 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.

**FOR FURTHER INFORMATION CONTACT:** Anthony Erb, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233–9259.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild requirements are intended to reduce the ambient levels of particulate matter (PM) in urban areas and are limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that sets out a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of this regulation is the certification of retrofit/rebuild

equipment. To comply with either of the two compliance programs, operators of the affected buses must use equipment which has been certified by the Agency.

Emissions requirements under either of the two programs depend on the availability of retrofit/rebuild equipment certified for each engine model. Engelhard has requested that this application be considered under Program 2 only. Therefore, certification of this equipment will not trigger any requirements under Program 1. Equipment certified for Program 2 must provide some level of PM reduction that can in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

**II. Notification of Intent To Certify**

By a notification of intent to certify dated October 24, 1994, Engelhard Corporation has applied for certification of equipment applicable to certain petroleum-fueled diesel engines, DDC 6V92TA MUI engines, used in urban buses of 1989 and earlier model years. The notification of intent to certify states that the candidate equipment will be certified at a maximum particulate matter (PM) emission level of 0.25 g/bhp-hr. Since this application is being submitted only under Program 2, and life cycle cost data is not required, certification will permit the use of this retrofit/rebuild equipment but will not specifically require its usage; nor will certification lead to more stringent emission standards for operators of fleets using the engines affected. The use of the equipment by transit operators to meet Program 2 requirements is discussed further below.

Major components of the candidate equipment are: (1) A muffler containing an oxidation catalyst, which takes the place of the original exhaust system muffler; (2) and a rebuild kit which incorporates a ceramic in-cylinder coating. The notification of intent to certify states that the candidate equipment is applicable to the following engines:

| Manufacturer | Engine model | Model years |
|---|---|---|
| DDC ..... | 6V92TA MUI . | 1979–1989 |

Engelhard presents exhaust emission data from testing the equipment on a recently rebuilt 1985 model year DDC 6V92TA MUI engine documenting PM emissions using the heavy-duty engine Federal Test Procedure. The PM emissions from this test equalled 0.22 g/bhp-hr. Exhaust testing with the equipment installed also showed that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NOx), emissions were less than the federal emission standards for 1987. Smoke emission measurements for the engine with the candidate equipment installed indicate compliance with applicable standards.

Engelhard has requested certification only under Program 2. Engelhard is applying for certification to a post rebuild PM level of 0.25 g/bhp-hr with the equipment installed on the DDC 6V92TA MUI engine. If the Agency approves Engelhard's request to certify this candidate equipment, urban bus operators who choose to comply with Program 2 of the urban bus regulation may use this equipment, but it would not be specifically required. If this equipment is certified, operators under Program 2 using this equipment will use the PM emission level(s) established during the certification review process, in the calculations for fleet level attained (FLA).

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the Engelhard notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild program. Interested parties are encouraged to review the notification of intent to certify and provide comments during the 45 day period. Please send separate copies of your comments to each of the above addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

**Richard Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 95–5405 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

### Institute of Museum Services

### 45 CFR Part 1180

### Competitive Grants Technical Amendments

**AGENCY:** Institute of Museum Services, NFAH.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Institute of Museum Services issues proposed amendments to regulations relating to its General Operating Support and Conservation Project Support grant programs. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions, use of funds, audit requirements, amount of awards, and remove unneeded provisions.

**DATES:** Comments must be received on or before May 1, 1995.

**ADDRESSES:** Comments should be addressed to Mamie Bittner, Public Information Officer, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Danvers, Program Director, Telephone: (202) 606–8539.

**SUPPLEMENTARY INFORMATION:**

**General Background**

The Museum Services Act (''the Act'' which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985, and 1990). The purpose of the Act is stated in section 202 as follows:

It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups: to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as

a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museums Services Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 101–512 Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations.

## The Need for the Amendment

The proposed amendment to the regulations are intended to simplify application requirements and make the programs more accessible to the applicants by making audit requirements apply evenly to all applicants, to make awards more responsive to the needs of applicants by increasing the maximum amount of conservation awards by distributing general operating awards more broadly across high quality museums and by assisting in program evaluation.

## Amendment by Amendment Analysis

1. Eligibility for applying for General Operating Support (GOS) grants.

Amendment 1 amends § 1180.5 which states the eligibility requirements that a museum must meet in order to be considered for a grant from the Institute. The Institute proposes an additional criteria for applicants to the General Operating Support program which would prohibit a museum from applying if it had two consecutive awards in the immediately preceding 2-year cycles, effective 1996. For example, if a museum applied for and received a two-year GOS award in 1996 and applied for and received a two-year GOS award in 1998, it would not be eligible to apply for a third award in 2000, but would be eligible to apply in 2001. However, if a museum applied for and received a two-year GOS award in 1996, and either did not apply in 1998 or applied for but did not receive an award in 1998, it would be eligible to apply for an award in 1999. The result of this change will allow a higher number of museums operating at high levels to benefit from the GOS program awards, and therefore provide greater benefit. The criteria would apply to applicants to the General Operating Support program only. The year 2000 would be the first deadline affected by this proposed rule.

2. Maximum awards for Conservation Project Support grants.

Amendment 2 revises § 1180.20(f)(1) which states that IMS normally makes a conservation award of no more than $25,000. The Institute proposes to raise the amount to $50,000. This increase will provide for the needs of museums to pursue more expensive projects to implement the recommendations of general conservation surveys and of institutional long range conservation plans.

3. Deleting ''Special Project'' from regulatory language.

Amendments 4 through 9 amend several regulations to remove references to a category of assistance no longer available. The Institute proposes to remove the term ''Special Project'' from the sections of the regulations provided below. The ''Special Project'' grant program has not been offered by the Institute since 1984. These changes have no impact on any other program and are made solely for clarification. The following sections will have references to ''Special Project'' removed: §§ 1180.17, 1180.35, 1180.40 (reserved), 1180.41, 1180.45, 1180.48 through 1180.50, 1180.58 and 1180.59.

4. Requiring final reports from recipients of assessment grants.

Amendment 10 revises § 1180.75(d) which states that a museum receiving a grant for an assessment need not submit a financial report or a performance report. The Institute intends to require reports from grantees for assessments so that the Institute will be better able to evaluate the effectiveness of assessment programs. The final reporting period would be extended beyond the normal deadline of 90 days after the close of the grant period to allow the museum to report on actions taken as a result of the assessment.

## Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before May 5, 1995, will be considered before the Director issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at the Institute of Museum Services, room 510, 1100 Pennsylvania Ave., NW, Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

## Executive Order 12291

These proposed amendments have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

## List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National Boards.

Dated: February 28, 1995.

**Diane B. Frankel,**

*Director, Institute of Museum Services.*

The Institute of Museum Services proposes to amend part 1180, subchapter E of chapter XI of title 45 of the Code of Federal Regulations as set forth below:

## SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

## PART 1180—GRANTS REGULATIONS

1. The authority citation for part 1180 is revised to read as follows:

**Authority:** 20 U.S.C. 961–969; Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994; 29 U.S.C. 794.

1a. Section 1180.5 is amended by adding paragraph (f) to read as follows:

### § 1180.5 Eligibility and burden of proof—Who may apply.

* * * * *

(f) In a given year, a museum that has not received two consecutive General Operating Support awards in the immediately preceding two-year cycles is eligible to apply to General Operating Support.

2. Section 1180.20 is amended by revising paragraph (f)(1) to read as follows:

### § 1180.20 Guidelines and standards for conservation projects.

* * * * *

(f) *Limits for Federal funding.* (1) The normal maximum amount of a Conservation Project Support grant will

be established through a notice published in the **Federal Register**. Beginning in FY 1996, the normal maximum amount is $50,000. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in Federal funds in excess of the normal maximum award. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

3. Section 1180.17 is revised to read as follows:

**§ 1180.17 Reports.**

In its final reports a grantee shall briefly detail how the expenditure of the grant funds has satisfied the proposed use of the funds as stated in its General Operating Support application or has accomplished the proposal as set forth in its application and has served the purpose of the Act as reflected in the applicable evaluation criteria in § 1180.14.

Section 1180.35 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1180.35 Group applications.**

(a) Eligible museums may apply as a group for a project grant.

(b) If a group of museums applies for a grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity, consisting solely of the museum group, to apply for the grant.

* * * * *

**§ 1180.40 [Reserved]**

5. Section 1180.40 is removed and reserved.

6. Section 1180.41 is amended by revising paragraph (a) to read as follows:

**§ 1180.41 The cost analysis; basis for grant amount.**

(a) Before the Director sets the amount of a grant, a cost analysis of the project is made which involves an examination of:

(1) The cost data in the detailed budget for the project;

(2) Specific elements of cost; and

(3) The necessity, reasonableness, and allowability under applicable statutes and regulations.

* * * * *

7. Section 1180.45 is amended by revising the heading and paragraph (a) to read as follows:

**§ 1180.45 Use of consultants.**

(a) Subject to Federal statutes and regulations, a grantee shall adhere to its general policies and practices when it hires, uses, and pays a consultant as part of the staff.

* * * * *

8. Sections 1180.48 through 1180.50 and 1180.58 are revised to read as follows:

**§ 1180.48 General conditions on publications.**

(a) *Content* of materials. Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of materials that it publishes or arranges to have published.

(b) *Required Statement.* The grantee shall ensure that any publication that contains materials also contains the following statement:

The contents of this (insert type of publication, e.g., book, report, film) were developed in whole or in part under a grant from the Institute of Museum Services. However, the contents do not necessarily represent the policy of the Institute, and endorsement by the Federal Government should not be assumed.

**§ 1180.49 Copyright policy for grantees.**

A grantee may copyright materials in accordance with government-wide policy applicable to copyright of publications developed under Federal grants.

**§ 1180.50 Definition of ''materials.''**

As used in §§ 1180.48 through 1180.49, *materials* means a copyrightable work developed in whole or in part with funds from a grant from the Institute.

**§ 1180.58 Records related to performance.**

(a) A grantee shall keep records revealing progress and results under the grant.

(b) The grantee shall use the records under paragraph (a) of this section to:

(1) Determine progress in accomplishing objectives; and

(2) Revise those objectives, if necessary, and authorized under the grant.

9. Section 1180.59 is amended by revising paragraph (a) to read as follows:

**§ 1180.59 Applicability.**

(a) Subparts B and C (§§ 1180.30 through 1180.58) apply to General Operating Support assistance, except as otherwise provided in these regulations.

* * * * *

10. Section 1180.75 is amended by revising paragraph (d) to read as follows:

**§ 1180.75 Funding and award procedures.**

* * * * *

(d) A museum receiving assistance under this subpart must submit a final financial and narrative report that evaluates the success of the assessment and actions taken by the museum as a result of the assessment. IMS may request the report be submitted up to 12 months after the close of the grant period.

(20 U.S.C. 96–969)

* * * * *

[FR Doc. 95–5341 Filed 3–3–95; 8:45 am]

BILLING CODE 7036–01–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Part 67

**[CGD 94–070]**

**RIN 2115–AE98**

## Facsimile Filing of Instruments

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its vessel documentation regulations to provide for optional filing of commercial instruments by facsimile, and to establish a filing and recording handling fee for filing instruments by facsimile. The option of filing commercial instruments by facsimile complements the centralization of Coast Guard vessel documentation services. Facsimile filing of commercial instruments is one way in which a centralized vessel documentation center can deliver timely services to distant vessel documentation customers and be responsive to time sensitive matters. Filing commercial instruments by facsimile should further streamline the vessel documentation process.

**DATES:** Comments must be received on or before May 5, 1995.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–070), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for

inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Don M. Wrye, Vessel Documentation and Tonnage Survey Branch; (202) 267–1492.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–070) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

## Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, and C. G. Green, Project Counsel, Office of Chief Counsel.

## Background and Purpose

Significant changes to the vessel documentation program were made in 1988 by Public Law 100–710 (the ''statute''). Among other things, the statute added chapter 313 to title 46, U.S. Code, to revise, consolidate, and codify into positive law the ship mortgage laws administered by the Department of Transportation. The statute made certain substantive changes to then-existing law to modernize ship mortgages and the filing and recording process.

The legislative history for the statute is contained in House Report No. 100–918. That report noted that one of the primary purposes of chapter 313 of title 46, U.S. Code, is to provide third parties with notice of the existence of mortgages and liens. The report further advocates the use of a central computer system to facilitate access to data. The report noted that the ''Secretary should also consider allowing private vessel documentation services to submit applications electronically, with appropriate paper document backup for legal purposes * * *'' This proposal would implement some of the suggestions the report made concerning office automation and should realize some of the benefits expected to flow from modernization.

On November 15, 1993, the Coast Guard published a final rule revising 46 CFR part 67 implementing the substantive changes made by the statute. The final rule became effective on January 1, 1994.

Under subpart O of the current regulations, instruments to be filed and recorded with the Coast Guard are first submitted to the appropriate port of record. An instrument submitted for filing and recording must be a completed, executed instrument at the time it is submitted. If the instrument submitted meets the minimal requirements for filing, it is filed and stamped with a date and time. If all of the necessary elements for recording the instrument are present when it is filed, it can be promptly recorded. If an instrument is filed but cannot be recorded because of an error or omission, the instrument is deemed ''filed subject to termination'' and a 90-day window is provided for correction. If corrected within the 90-day period, the instrument may then be recorded with the recording date and time ''relating back'' to the date and time filed. If the instrument is not corrected within the 90-day period, the filing is terminated and the instrument is returned. In order to preserve the notice purpose of the statute, any instrument filed with the Coast Guard, even if the filing is terminated and the instrument not recorded, is indexed on the vessel's General Index or Abstract of Title (form CG–1332). Allowing for the submission of an instrument by facsimile for filing would not change any of the procedural steps provided in the current regulations. However, the submission of an instrument by facsimile for filing will start the process earlier, resulting in an earlier date and time for filing and recording purposes.

The Coast Guard is proceeding with the consolidation of its 14 regional vessel documentation offices into one central location. This centralization will conclude the effort begun in 1983 when a number of field offices were consolidated into regional offices. Although most vessel documentation transactions are currently completed by ordinary mail, a number of persons have expressed concern with regard to centralization for those cases where ''over-the-counter'' service is desired. As an example, some lending institutions will not advance funds under a ship mortgage until assured that the mortgage has been filed and recorded so as to acquire preferred status. In such cases, the Coast Guard documentation officer will verify over the telephone that the mortgage has been filed and recorded and the lending institution will advance funds immediately. The Coast Guard anticipates that the desire for such service will continue. Therefore, the Coast Guard is contemplating further use of office automation technology as part of the centralization effort. One such use of office automation technology is the filing of certain forms and instruments by facsimile. This document proposes amendments to the Coast Guard's regulations to permit optional submission by facsimile of certain forms and instruments for filing.

## Discussion of Proposed Rules

The Coast Guard proposes to add to 46 CFR part 67 a new § 67.219 to provide for filing commercial instruments by facsimile submission. Paragraph (a) of proposed § 67.219 would limit the instruments that could be filed by facsimile submission to those identified as eligible for filing and recording in § 67.200. Those instruments are: bills of sale and similar instruments; deeds of gift; mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof; preferred mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof; interlender agreements affecting mortgages, preferred mortgages, and related instruments; and notices of claim of lien and assignments, amendments, and satisfactions and releases thereof. Paragraph (a) of proposed § 67.219 would also list the facsimile telephone number for the National Vessel Documentation Command to which facsimile submissions may be made. Finally, paragraph (a) of proposed § 67.219 would require that the vessel to which the instrument relates either be currently documented or be the subject of an application for documentation.

In accordance with § 67.203, no instrument will be accepted for filing unless it pertains to a documented vessel or a vessel for which a properly completed application for documentation, redocumentation, or deletion from documentation is filed. The Coast Guard deems an instrument filed contemporaneously with a properly completed application for documentation, redocumentation, or deletion from documentation of the related vessel to meet the requirements of the regulation. Therefore, if the vessel related to the instrument being submitted by facsimile for filing is not a currently documented vessel, a completed application would also have to be submitted by facsimile with the instrument.

Paragraph (b) of proposed § 67.219 would require that the person submitting an instrument by facsimile for filing within 10 days submit the original instrument in duplicate to the National Vessel Documentation Command. One of the duplicate instruments submitted would have to bear original signatures. The 10-day period would begin to run at the time the instrument is received by facsimile at the National Vessel Documentation Command. Since the instrument being submitted by facsimile must be a completed and executed document, the submitter should be able to take it from the facsimile machine, place it in an envelope with the original of any required application and the appropriate fee, and mail the original and a copy to the National Vessel Documentation Command without delay. Thus, the 10-day period is considered a sufficient mailing window. The duplicate submission requirement proposed in paragraph (b) would meet the submission requirement for the filing of all instruments in § 67.209, while obtaining the earlier filing date for those instruments submitted by facsimile. In addition, paragraph (b) of proposed § 67.219 would require that the original of any application required to be submitted by paragraph (a) of this section, which is not already on file, also be submitted to the National Vessel Documentation Command.

Paragraph (c) of proposed § 67.219 would provide that upon receipt of the duplicate instruments and the original of any required application, the date and time of recording of the instrument ''relates back'' to the date and time that the instrument submitted by facsimile was filed. Provided that the instrument submitted by facsimile for filing meets the minimal requirements for filing, it would be filed at the date and time received by facsimile. The objective of submitting an instrument by facsimile for filing is to obtain an earlier filing date than could otherwise be acquired. Because the instrument submitted by facsimile is itself filed, the process should work well to meet that objective, even during weekends. For example, if an instrument were submitted by facsimile for filing late Friday evening, it would not be reviewed to ensure that it met the filing requirements until the next regular workday. On a regular weekend that would be the following Monday. On most holiday weekends, that would be the following Tuesday. Therefore, it is possible that an instrument submitted by facsimile for filing would not be reviewed to determine whether it met the minimal filing requirements until as many as four days after it was submitted. However, if the instrument submitted by facsimile does meet the filing requirements, then it would be stamped filed and the date and time of filing would be the date and time received by facsimile. The filing of the instrument would then be indexed on the vessel's General Index or Abstract of Title (form CG–1332). Of course, the 10-day period for submitting the duplicate instruments would also start running on the date the instrument is submitted by facsimile. Therefore, persons submitting an instrument by facsimile for filing must exercise due diligence to ensure that the duplicate instruments required by paragraph (b) arrive within the 10-day period. When the duplicate instruments arrive, they would be compared with the instrument filed by facsimile and, if not subject to termination under paragraph (f) of this section, the instrument would be recorded.

Paragraph (d) of proposed § 67.219 would require that all instruments filed by facsimile be clearly legible as received, that they be originally submitted from 8½-inch by 11-inch paper in not less than 10-point type size, and that they be accompanied by a cover sheet. This requirement would provide for minimum quality control of the instruments submitted by facsimile for filing. In addition, clear legibility of the instrument as received will assist Coast Guard personnel to ensure that the instrument meets minimum requirements for filing and recording pending receipt of the duplicate instruments in accordance with paragraph (b).

Paragraph (e) of proposed § 67.219 would indicate that the facsimile cover sheet required by paragraph (d) should contain the name, address, telephone number and facsimile telephone number of the person submitting the instrument by facsimile, and the number of pages submitted. This information will assist Coast Guard personnel to verify receipt of the complete instrument and will provide a point of contact should a difficulty arise in facsimile transmission.

Paragraph (f) of proposed § 67.219 would state the conditions upon which the filing of an instrument submitted by facsimile would be terminated. First, if the duplicate instruments required by paragraph (b) are not received within the 10-day period following submission of the instrument by facsimile, the filing is terminated and the instrument submitted by facsimile is returned to the submitter. Second, if there is any variance between the instrument submitted by facsimile and the duplicate instruments required by paragraph (b), the filing is terminated and the instrument submitted by facsimile is returned to the submitter. The provision for termination because of a variance would ensure that the instrument being submitted by facsimile for filing is not being submitted for the purpose of reserving an earlier filing date for a different or amended instrument submitted as the duplicate instruments required by paragraph (b). The instrument being submitted by facsimile for filing must be a complete and executed instrument at the time it is submitted, as is the case for any instrument submitted for filing under Subpart O of the current regulations.

Paragraph (g) of proposed § 67.219 would provide that where the filing of an instrument submitted by facsimile is terminated pursuant to paragraph (f)(3) because of a variance with the duplicate instruments submitted in accordance with paragraph (b), the duplicate instruments would be treated as an original submission for filing. Provided this instrument meets the minimal requirements for filing, it would be filed but would be subject to termination under § 67.217(a)(1). This instrument would be subject to termination because of the variance with the earlier instrument submitted by facsimile. The termination of filing and distribution of instruments procedures described in § 67.217 (b) and (c) would apply. The reason for treating this instrument as subject to termination is that the same transaction has been addressed by two different instruments with a variance between them. Therefore, the veracity of the facts of the transaction as reflected in the two instruments is in question. The instrument submitted as the duplicate instruments would be subject to the 90-day termination period in which the variance may be explained, thereby curing the defect and allowing for recording of the instrument. In this

instance, the recording date and time would relate back to the date and time that the ''duplicate instruments'' were filed subject to termination. A letter from the person who submitted the instrument by facsimile for filing explaining that the instrument submitted by facsimile has been superseded by the duplicate instruments would be sufficient.

Paragraph (a) of § 67.500 would be revised to clarify the Coast Guard's current practice to not perform any vessel documentation service which is subject to a fee until the required fee is paid. As is current practice, the person requesting the documentation service would submit the fee at the time the service is requested. As applied to the submission by facsimile of instruments for filing, the payment of the fee would accompany the submission of the duplicate instruments submitted in accordance with paragraph (b) of this section.

A new § 67.540 would be added to clearly state that a handling fee would be charged for processing an instrument submitted by facsimile for filing. This fee would not alter the current per page fee charged for filing and recording services, but would be an additional per page fee.

An appropriate entry in Table 67.550—FEES in § 67.550 would be added to reflect the amount of the fee added to address the handling fee. This additional fee is justified because of the additional time Coast Guard personnel would have to expend in processing the facsimile submission, and to cover the added expense of facsimile machines. For example, Coast Guard personnel would have to receive and sort the facsimile submission, review it to ensure that it met minimal filing requirements, assign a filing date and time, store the facsimile submission, retrieve it when the duplicate instruments were received, and compare the facsimile with the duplicate instruments. Based on the additional personnel handling required for an instrument submitted by facsimile for filing, and additional equipment costs, a fee of $2.00 per page is proposed.

## Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard anticipates that optional filing by facsimile will be used only in a limited number of cases. For example, when additional financing is being negotiated; when an assignment or assumption of an existing mortgage is pending; when financing at favorable rates is time critical; or when a vessel owner desires to meet a specific sailing date and filing an instrument is critical to that date, are situations when filing by facsimile could be advantageous. Nevertheless, submission by facsimile is proposed as an optional method of presenting documents for filing. A party may always use regular mail or personal delivery if desired. Therefore, any additional costs to the public associated with this proposal would be due to an election to use the optional method.

In order to more fully anticipate the costs and benefits associated with this proposal, the Coast Guard specifically solicits information from the public concerning potential use of the option of filing by facsimile.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

As explained earlier in this preamble, this proposal, if adopted, would merely add an optional method of submitting certain forms and instruments to the Coast Guard for filing. Since filing by facsimile would be optional, any additional costs borne by any users would be at their election. Current methods of submitting instruments for filing, at no increase in costs, would remain available. In addition, it is anticipated that the option of filing by facsimile would be used only in limited situations where time is of the essence. Therefore, the Coast Guard expects the impact of this proposal to be minimal.

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

## Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposal merely describes an optional method of submitting instruments for filing and recording.

## Federalism

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

## Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal has been determined to be categorically excluded because the changes proposed are administrative and procedural in nature, relate solely to the documentation of vessels, and clearly have no environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. Section 67.219 is added to read as follows:

### § 67.219 Optional filing of instruments by facsimile.

(a) Any instrument identified as eligible for filing and recording under § 67.200 may be submitted by facsimile for filing to the National Vessel Documentation Command at [telephone number to be inserted in final rule]. If the instrument submitted by facsimile for filing pertains to a vessel that is not a currently documented vessel, a properly completed Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) or an

application for deletion from documentation must already be on file with the National Vessel Documentation Command or must be submitted by facsimile with the instrument being submitted by facsimile for filing.

(b) Within 10 days of submitting an instrument by facsimile for filing, the person submitting the instrument by facsimile must submit the instrument in duplicate to the National Vessel Documentation Command, [address to be inserted in final rule]; at least one copy must bear original signatures. If not already on file, the original of any application required by paragraph (a) of this section must also be submitted with the original instrument to the National Vessel Documentation Command.

(c) Upon receipt of the instrument in duplicate in accordance with paragraph (b) of this section, the date and time of recording of the instrument is the date and time the instrument submitted by facsimile was filed.

(d) All instruments submitted by facsimile for filing must be clearly legible, submitted from 8½-inch by 11-inch paper in not less than 10-point type size, and accompanied by a cover sheet.

(e) The facsimile cover sheet required by paragraph (d) of this section should indicate the name, address, telephone number and facsimile telephone number of the person submitting the instrument by facsimile, and the number of pages submitted by facsimile.

(f) The filing of any instrument submitted by facsimile is terminated and the instrument will be returned to the submitter if:

(1) The instrument is subject to termination for any cause under § 67.217(a);

(2) The instrument required to be submitted in duplicate in accordance with paragraph (b) of this section is not received within the 10-day period; or

(3) There is any variance between the instrument submitted by facsimile for filing and the instrument submitted in duplicate in accordance with paragraph (b) of this section.

(g) When the filing of an instrument submitted by facsimile is terminated for a variance in accordance with paragraph (f)(3) of this section, the instrument submitted in duplicate in accordance with paragraph (b) of this section will be deemed to be an original filing under this subpart subject to termination under § 67.217(a)(1). The instrument submitted in duplicate will be deemed not in substantial compliance with the applicable regulations in this part because of the variance between it and the instrument submitted by facsimile. The procedures for termination of filing and disposition of instruments described in paragraphs (b) and (c) of § 67.217 will apply.

3. In § 67.500, paragraph (a) is revised to read as follows:

**§ 67.500 Applicability.**

(a) This subpart specifies documentation services provided for vessels for which fees are applicable. No documentation service for which a fee is applicable will be performed until the appropriate fee has been paid. Fees are contained in Table 67.550.

* * * * *

4. Section 67.540 is added to read as follows:

**§ 67.540 Facsimile handling fee.**

A handling fee is charged for processing an instrument submitted by facsimile for filing in accordance with subpart O of this part.

5. In § 67.550, Table 67.550 is amended by adding ''Facsimile submission handling'' as an entry following the entry ''Notice of claim of lien and related instruments'' under the category ''Filing and recording:'' to read as follows:

**§ 67.550 Fee table.**

* * * * *

TABLE 67.550.—FEES

| Activity | Reference | Fee |
|---|---|---|
| * * * * * | * | * |
| Facsimile submission handling | Subpart O | [1] 2.00 |
| * * * * * | * | * |

[1] Per page.

* * * * *

Dated: February 28, 1995.

**N.W. Lemley,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 95–5387 Filed 3–3–95; 8:45 am]

**BILLING CODE 4910–14–M**

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 95–009, Notice 01]**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** This notice announces that NHTSA will be holding a public meeting regarding the misuse of child restraint systems (safety seats). NHTSA seeks comments on actions that the agency, industry and public can do to improve the proper installation and use of child safety seats.

**DATES:** *Public meeting:* A public meeting to hear views and comments will be held in Indianapolis, Indiana on April 2, 1995, from 1 p.m. to 4 p.m.

Those wishing to make oral presentations at the meeting should contact Dr. George Mouchahoir, at the address or telephone number listed below by March 24, 1995.

*Written comments:* Written comments may be submitted to the agency and must be received by April 2, 1995.

**ADDRESSES:** *Public meeting:* The public meeting will be held at the following location: The Hyatt Regency Indianapolis, One South Capitol Avenue, Indianapolis, Indiana 46204, Telephone: (317) 632–1234/(800) 233–1234 Toll Free Reservations.

*Written comments:* All written comments must refer to the docket and notice number of this notice and be submitted (preferable 10 copies) to the Docket Section, National Highway Traffic Safety Administration (NHTSA), Room 5109, 400 Seventh St., S.W., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

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

**SUPPLEMENTARY INFORMATION:** A child safety seat that is installed properly and used correctly provides very effective crash protection for a child. However, the safety benefits of a child seat can be reduced or negated by misuse of the seat. The agency believes in most cases, the misuse is unknown to the person installing or using the restraint.

In September 1994, three-year-old Dana Hutchinson was killed in a misused child seat. The DANA Foundation, established by the child's family after the crash to encourage correct safety seat use, describes the crash:

> Dana's father had installed her child safety seat in their car for a short trip to Grandma's house. As always, he checked it to make sure it was tightly held. When her mother picked her up from school, Dana was securely fastened in the seat, and the installation was double-checked. As always, she and her two brothers were safely buckled in before the trip began.
>
> It was raining very hard, and the roads were slippery. Their car was in a serious collision with a pick-up truck, and Dana, her mother, and her two brothers were injured. A few days later, Dana died from severe head and neck injuries. The police report from the accident stated an opinion that her child safety restraint was improperly secured.

The vehicle in which Dana Hutchinson was restrained required a supplemental buckle that was specially designed for use with child seats. The need for this buckle was discussed in the vehicle owner's manual. While Dana's parents did not read the manual, they thought they had done everything they were supposed to do to secure their child in the car seat.

Improving the proper installation and use of child seats is a NHTSA priority. In recent months, NHTSA Administrator Ricardo Martinez appeared on national television to make the public more aware of misuse problems. The agency has also worked with newspapers, magazines and other journals across the country to alert the public that misuse is ''foiling child safety seat's effectiveness'' (quoting headline in December 12, 1994 article of the Washington Post). Further, last month Administrator Martinez announced the formation of a ''blue ribbon panel'' of experts to recommend ways that safety seats can be made easier to install and use. Panel members include senior representatives of the motor vehicle, child safety seat and seat belt industries, a pediatric physician and several child safety seat practitioners. Mr. Joseph Colella, the executive director of the DANA Foundation, is also a member. The panel moderator is Philip Haseltine, president of the American Coalition for Traffic Safety. By June 1, the panel will make recommendations to the industries affected and the general public.

NHTSA is having the public meeting to afford interested persons the opportunity to comment on child seat misuse problems. The transcript of the meeting will be made available to the blue ribbon panel for its consideration. While blue ribbon panel members may be attending the public meeting as observers, they will not be participating formally in the proceeding.

The agency would like information about misuse problems from parents or other caretakers who personally had difficulty using a safety seat with a child. What feature of the child seat promoted the misuse problem? NHTSA is also interested in the observations of educators or safety specialists who have encountered misuse problems when training members of the public to use child seats correctly. How are safety seats being misused? What has been or could be done to reduce that misuse? How can parents and other caretakers be encouraged to read owner's manuals to learn how to use a child safety seat correctly? The agency seeks information from child seat and vehicle manufacturers on what aspects of Federal Motor Vehicle Safety Standard 213, ''Child Restraint Systems,'' encourage or discourage proper child seat use. For example, child seat labeling requirements have often been criticized as overwhelming the consumer with long and complex warnings and instructions. How can these labeling requirements be improved? Which aspects of the labeling requirements should be retained, and which should be abolished, and why? How do manufacturers assess whether a child seat will be misused (i.e., the potential for misuse)? What actions have been taken by vehicle and child seat manufacturers to reduce consumers' misuse of child seats?

NHTSA requests comments from all interested persons on the compatibility between vehicle seat and belt assemblies and child safety seats that promote system misuse. NHTSA is concerned that child safety seats and the vehicles they are used in are not always readily compatible, making it difficult for parents to install and use the safety seat to ensure that their child receives the best level of protection. The incompatibility arises from differences in vehicle seat cushion width, depth and angles; forward-mounted anchorage points, and vehicle belt systems with emergency locking retractors, at times create an improper fit or difficult installation of the safety seat. As noted above, the blue ribbon panel will recommend ways to make child safety seats and vehicles more compatible to promote convenient and correct usage.

The agency has chosen the date and place of the public meeting to coincide with NHTSA's Lifesavers 1995 National Conference on Highway Safety Priorities, which will be held on April 2–5, 1995 in Indianapolis, Indiana. It hopes that scheduling the public meeting for April 2 will encourage persons participating in the Lifesavers conference to attend the public meeting to share their views. Typically, Lifesavers participants work in state highway safety agencies, community traffic safety programs, state or local EMS or injury prevention offices, and state or local law enforcement agencies. (For information about the Lifesavers conference, contact Ms. Shirley Barton, NHTSA Office of Traffic Safety Programs, at (202) 366–2687.)

## Procedural Matters

As noted at the beginning of this notice, persons wishing to speak at the public meeting should contact Dr. Mouchahoir by the indicated date. If the number of requests for oral presentations exceeds the available time, NHTSA will ask prospective speakers with similar views to combine presentations. To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the meeting. Thus, any person desiring assistance of auxiliary aids should contact Ms. Barbara Carnes, NHTSA Office of Rulemaking, telephone (202) 366–1810, no later than 10 days before the meeting.

Those speaking at the public meeting should limit their presentation to 10 minutes. If the presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting so that NHTSA can readily include the material in the public record.

The presiding officials at the meeting may ask questions of any speaker, and any participant may submit written questions for the official, at its discretion, to address to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits,

persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentations will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

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

Issued on: March 1, 1995.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 95–5416 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–59–P

# Notices

Federal Register
Vol. 60, No. 43
Monday, March 6, 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

### Commodity Credit Corporation

### Feed Grain Donations; Spokane Indian Reservation of Washington

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice.

**SUMMARY:** The Acting Executive Vice President, Commodity Credit Corporation (CCC) announces that the Spokane Indian Reservation of Washington is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

**FOR FURTHER INFORMATION CONTACT:** John Newcomer, Consolidated Farm Service Agency, P.O. Box 2415, Washington, DC, 20013–2415, 202–720–6157.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, notice is being given that it is determined that:

1. The chronic economic distress of the needy members of the Spokane Tribe using the Spokane Indian Reservation of Washington has been materially increased and become acute because of severe drought and high temperatures during the 1994 growing season, thereby severely affecting livestock feed production and causing increased economic distress. This reservation is utilized by members of the Spokane Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by CCC for livestock feed for such needy members of the Spokane Tribe using the Spokane Indian Reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, the Spokane Indian Reservation of Washington is declared an acute distress area and the donation of feed grain owned by the CCC is authorized to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Spokane Tribe utilizing such lands. These donations by the CCC may commence upon February 2, 1995, and shall be made available through April 30, 1995, or such other date as may be stated in a notice issued by the Acting Executive Vice President, CCC.

Signed at Washington, DC, on March 1, 1995.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 95–5408 Filed 3–3–95; 8:45 am]

BILLING CODE 3410–05–P

## APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

### Special Meeting

**AGENCY:** Appalachian States Low-Level Radioactive Waste Commission.

**ACTION:** Open meeting.

**SUMMARY:** The Appalachian States Low-Level Radioactive Waste Commission will hold an executive session and a public meeting on March 20, 1995. The executive session is closed to the public.

**DATES:** March 20, 1995.

**ADDRESSES:** Radisson Penn Harris Hotel & Convention Center 1150 Camp Hill Bypass in Camp Hill, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Marc S. Tenan, Executive Director 207 State Street, Harrisburg, PA 17101, 717–234–6295.

**SUPPLEMENTARY INFORMATION:** The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Pub. L. 100–319, May 19, 1988). The Commission represents the states of Delaware, Maryland, West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Pub. L. 99–240, January 15, 1986).

The primary purpose of the public meeting is to consider a $1.5 million grant request from the Pennsylvania Department of Environmental Resources. A summary of the executive session will also be presented.

The notice of this special meeting may not be printed with 14 days notice as required by Public Law 100–319 and the Administrative Procedure Act because of the urgency of the agenda.

**Marc S. Tenan,**

*Executive Director.*

[FR Doc. 95–5482 Filed 3–3–95; 8:45 am]

BILLING CODE 0000–00–M

## DEPARTMENT OF COMMERCE

### Estimates of the Voting Age Population for 1994

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1994, for each state and the District of Columbia are as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: February 28, 1995.

**Ronald H. Brown,**

*Secretary of Commerce.*

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 1994

[In thousands]

| Area | Population 18 and over |
|---|---|
| United States | 192,323 |
| Alabama | 3,139 |
| Alaska | 415 |
| Arizona | 2,936 |
| Arkansas | 1,812 |
| California | 22,753 |
| Colorado | 2,686 |
| Connecticut | 2,487 |
| Delaware | 532 |
| District of Columbia | 452 |
| Florida | 10,690 |
| Georgia | 5,163 |
| Hawaii | 874 |
| Idaho | 794 |
| Illinois | 8,668 |
| Indiana | 4,279 |
| Iowa | 2,100 |
| Kansas | 1,863 |
| Kentucky | 2,857 |
| Louisiana | 3,080 |
| Maine | 935 |
| Maryland | 3,743 |

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 1994—Continued

[In thousands]

| Area | Population 18 and over |
|---|---|
| Massachusetts | 4,617 |
| Michigan | 6,971 |
| Minnesota | 3,327 |
| Mississippi | 1,913 |
| Missouri | 3,899 |
| Montana | 619 |
| Nebraska | 1,181 |
| Nevada | 1,081 |
| New Hampshire | 845 |
| New Jersey | 5,973 |
| New Mexico | 1,156 |
| New York | 13,658 |
| North Carolina | 5,314 |
| North Dakota | 466 |
| Ohio | 8,248 |
| Oklahoma | 2,378 |
| Oregon | 2,304 |
| Pennsylvania | 9,155 |
| Rhode Island | 757 |
| South Carolina | 2,712 |
| South Dakota | 513 |
| Tennessee | 3,879 |
| Texas | 13,077 |
| Utah | 1,236 |
| Vermont | 435 |
| Virginia | 4,949 |
| Washington | 3,935 |
| West Virginia | 1,393 |
| Wisconsin | 3,735 |
| Wyoming | 339 |

**Note:** These estimates are consistent with the population as enumerated in the 1990 census, and have not been adjusted for census coverage errors.

Source: Population Distribution Branch, Bureau of the Census, Washington, D.C.

For a description of methodology see Current Population Reports, P25–1010 and P25–1106.

[FR Doc. 95–5311 Filed 3–3–95; 8:45 am]

**BILLING CODE 3510–07–M**

## International Trade Administration

## Notice of Scope Rulings

February 24, 1995.

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of scope rulings and anticircumvention inquiries.

**SUMMARY:** The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between October 1, 1994, and December 31, 1994. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

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

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Trentham, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3931.

### Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between October 1, 1994, and December 31, 1994, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in April 1995 a notice of scope rulings and anticircumvention inquiries completed between January 1, 1995, and March 31, 1995, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

### I. Scope Rulings Completed Between October 1, 1994, and December 31, 1994:

Country: People's Republic of China.

A–570–504 *Petroleum Wax Candles*

Lew-Mark Baking Co.—The pansy candle tin is within the scope of the order. 12/16/94.

Country: Japan.

A–588–405 *Cellular Mobile Telephone and Subassemblies*

Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics America, Inc.—Model 2000 portable cellular telephone is not within the scope of the order. 11/09/94.

JRC International—Portable cellular telephone model PTR–830 is not within the scope of the order. 11/09/94.

A–588–823 *Professional Electric Cutting Tools*

Makita Inc., Makita U.S.A.—Wood Surfacer model LP1812C is not within the scope of the order. 12/16/94.

Makita Inc., Makita U.S.A.—Electronic Jig Saw model 4304 is not within the scope of the order. 12/16/94.

A–588–814 *Polyethylene Terephthalate (PET) Film*

Kimoto U.S.A. Inc.—Anti-Static Clear Film is not within the scope of the order. 11/10/94.

Tektronix Inc., Tektronix Asia—Overhead projection film model 4681 is within the scope of the order and model 4684 is not within the scope of the order. 12/19/94.

Country: Germany.

A–428–801 *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order. 12/05/94

### II. Anticircumvention Rulings Completed Between October 1, 1994, and December 31, 1994

None.

### III. Scope Inquiries Terminated Between October 1, 1994, and December 31, 1994

Country: Sri Lanka.

C–542–401 *Mill Products and Apparel*

Liz Claiborne, Inc.—Clarification to determine whether certain women's cotton denim jeans are within the scope of the countervailing duty (CVD) order. The CVD order was revoked as of May 18, 1992, rendering this scope request moot. 12/02/94.

### IV. Anticircumvention Inquiries Terminated Between October 1, 1994, and December 31, 1994

None.

### V. Pending Scope Clarification Requests as of December 31, 1994

Country: Canada.

A–122–006 *Steel Jacks from Canada*

Seeburn, a division of Ventra Group, Inc.—Clarification to determine whether automotive tire jacks are within the scope of the order.

Country: Mexico.

A–201–805 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line

pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Tubacero International Corporation - Clarification to determine whether circular welded carbon steel piping, 16 inches in outside diameter with 3/8 inch wall thickness, for use in extremely heavy load bearing applications is within the scope of the order.

Country: Brazil.

A–351–809 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–351–503 *Iron Construction Castings*

Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.

C–351–504 *Iron Construction Castings*

Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.

Country: France.

A–427–078 *Sugar*

Boiron-Borneman, Inc.—Clarification to determine whether manufactured homeopathic sugar pellets are within the scope of the order.

Country: Turkey.

A–489–501 *Welded Carbon Steel Standard Pipe and Tube Products*

Allied Tube and Conduit Corporation, Wheatland Tube Company, Laclede Steel Company, Sharon Tube Company, and Sawhill Tubular Division of Armco, Inc. - Clarification to determine whether pipe and tube which meets the order's physical specifications, when intended for or actually used as standard pipe and tube, is included within the scope of the order.

Country: People's Republic of China.

A–570–001 *Potassium Permanganate*

Aerostat Inc.—Clarification to determine whether certain plastic ignitor spheres are within the scope of the order.

A–570–504 *Petroleum Wax Candles*

Two's Company—Clarification to determine whether certain decorated pillar candles and red and gold angel taper candles are within the scope of the order.

Springwater Cookie and Confections—Clarification to determine whether certain feather twist candles are within the scope of the order.

A–570–502 *Iron Construction Castings*

Jack's International—Clarification to determine whether certain cast iron area drains are within the scope of the order.

A–570–804 *Sparklers*

Fritz Companies Inc.—Clarification to determine whether 14 inch Morning Glorys are within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

Country: Korea.

A–580–809 *Circular Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

A–580–811 *Steel Wire Rope*

TSK Korea and Hi-Lex Corp. - Clarification to determine whether certain motion control cables are within the scope of the order.

Country: Japan.

A–588–802 *3½″ Microdisks*

TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

Dana Corporation—Clarification to determine whether an automotive component known variously as a center bracket assembly, center bearing assembly, support bracket, or shaft support bearing, is within the scope of the order.

Nakanishi Manufacturing Corp.—Clarification to determine whether a stamped steel washer with a zinc phosphate and adhesive coating which is used in the manufacture of a ball bearing seal is within the scope of the order.

A–588–014 *Tuners*

Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components, are within the scope of the finding.

Fujitsu Ten Corporation of America - Clarification to determine whether certain ''front end'' components of car tuners are within the scope of the finding.

A–588–405 *Cellular Mobile Telephones and Subassemblies*

Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether certain portable telephones, subassemblies, and components thereof are within the scope of the order (five products).

TDK Corporation of America—Clarification to determine whether Duplexers, Voltage Control Oscillators, and Isolators are within the scope of the order.

JRC International—Clarification to determine whether portable cellular telephone model PTR–829 is within the scope of the order.

JRC International Clarification to determine whether portable cellular telephone model PTR–870 is within the scope of the order.

NEC Corporation and NEC America, Inc.—Clarification to determine whether portable cellular telephone models MP5A1D1 and MP5A1D2 are within the scope of the order.

Matsushita Communication Industrial Corporation of America—Clarification to determine whether Panasonic portable cellular telephone, models EB–3560 and EB–3561, are within the scope of the order.

A–588–823 *Professional Electric Cutting Tools*

Makita Inc., Makita U.S.A.—Clarification to determine whether Planer-Jointer model 2030SC is

within the scope of the order. Makita Inc., Makita U.S.A.—Clarification to determine whether Chain Morticer model 7104L is within the scope of the order.

A–588–055 *Acrylic Sheet*

Sumitomo Chemical America, Inc.—Clarification to determine whether acrylic sheet with light scattering properties is within the scope of the order.

A–588–604 *Tapered Roller Bearings and Parts Thereof*

Koyo Seiko—Clarification to determine whether certain forgings are within the scope of the order. Affirmative preliminary ruling issued on February 28, 1994.

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*

Iwatsu America, Inc. and Iwatsu Electric Co.—Clarification to determine whether certain circuit cards are within the scope of the order.

Country: Venezuela.

A–307–805 *Circular Welded Non-Alloy Steel Pipe*

Self-initiation. Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on January 13, 1994.

Country: Argentina.

C–357–803 *Leather*

Petitioners—Clarification to determine whether upper bovine leather without hair on, not whole, prepared after tanning is within the scope of the countervailing duty order.

Country: Sweden.

A–401–040 *Stainless Steel Plate*

Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the finding. Affirmative preliminary scope ruling issued on November 16, 1994.

Country: Germany.

A–428–801 *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

Consolidated Saw Mill International (CSMI) Inc.—Clarification to determine whether certain Cambio bearings contained in its sawmill debarker are within the scope of the order. Affirmative preliminary ruling issued on December 16, 1994.

Marquart Switches—Clarification to determine whether certain steel balls are within the scope of the order.

Country: Taiwan.

A–583–810 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–583–603 *Stainless Steel Cookware*

Max Burton Enterprises, Inc.—Clarification to determine whether the Max Burton StoveTop Smoker is within the scope of the order.

A–583–508 *Porcelain-on-Steel Cookware*

Blair Corp.—Clarification to determine whether product number 271911, eight-quart stock pot and product number 271921, twelve-quart stock pot are within the scope of the order.

Blair Corp.—Clarification to determine whether product number 1001, seven piece cookware set is within the scope of the order.

A–583–816 *Certain Stainless Steel Butt-Weld Pipe Fittings*

Top Line Process Equipment Corporation—Clarification to determine whether various stainless steel tube fittings with non-welded end-connections, and other products, are within the scope of the order.

**VI. Pending Anticircumvention Inquiry Requests as of December 31, 1994**

Country: Mexico.

A–201–806 *Steel Wire Rope*

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope. Affirmative preliminary determination of circumvention published June 3, 1994.

Country: Japan.

A–588–602 *Carbon Steel Butt-Weld Pipe Fittings*

U.S. Fittings Group—Anticircumvention inquiry to determine whether a producer of Carbon Steel Butt-Weld Pipe Fittings in Japan is circumventing the antidumping duty order by shipping parts to Thailand for processing and importing the finished product into the United States.

Country: Germany.

A–428–811 *Hot-Rolled Lead and Bismuth Carbon Steel Products*

Inland Steel Bar Company and USS Kolbe Steel Company—Anticircumvention inquiry to determine whether a producer of steel in Germany is circumventing the antidumping duty order by shipping leaded steel billets to its wholly-owned subsidiary in the Netherlands, hot-rolling the billets into bars and rods and then exporting them to the United States.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: February 24, 1995.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–5430 Filed 3–3–95; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[Docket No. 931090–4048]**

**RIN 0625–AA06**

### Allocation of Duty-Exemptions for Calendar Year 1995 Among Watch Producers Located in the Virgin Islands

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This action allocates 1995 duty-exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 482–1660.

**SUPPLEMENTARY INFORMATION:** Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the

regulations (15 CFR part 303), this action establishes the total quantity of duty-free insular watches and watch movements for 1995 at 5,100,000 units and divides this amount among the three insular possessions of the United States and the Northern Mariana Islands. Of this amount, 3,600,000 units may be allocated to Virgin Islands producers, 500,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (59 FR 8847).

The criteria for the calculation of the 1995 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by producers in the Virgin Islands and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1994 the Virgin Islands watch assembly firms shipped 2,269,461 watches and watch movements into the customs territory of the United States under Pub. L. 97–446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1994 plus the creditable wages paid by the industry during calendar year 1994 to residents of the territory totalled $5,694,887.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 1995 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA–334P) as a result of the Departments' verification; and reallocation of the duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1995 in the Virgin Islands are as follows:

| Name of firm | Annual allocation |
|---|---|
| Belair Quartz, Inc | 500,000 |
| Hampden Watch Co., Inc | 250,000 |
| Progress Watch Co., Inc | 650,000 |
| Unitime Industries, Inc | 500,000 |
| Tropex, Inc | 400,000 |
| Timex V.I., Inc | 742,000 |

**Susan G. Esserman,**

*Acting Assistant Secretary for Import Administration.*

**Leslie M. Turner,**

*Assistant Secretary for Territorial and International Affairs.*

[FR Doc. 95–5431 Filed 3–3–95; 8:45 am]

BILLING CODE 3510–DS–P and 4310–93–P

## National Oceanic and Atmospheric Administration

**[Docket No. 950227061–5061–01; I.D. 020695C]**

**RIN 0648–XX11**

## Northeast Fishing Industry Grants (FIG) Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of Federal assistance.

**SUMMARY:** NMFS issues this notice describing the conditions under which applications will be accepted under the FIG Program and how NMFS will determine which applications it will fund. This notice implements the second round of the FIG Program, for which $4.5 million is available to fund innovative proposals to assist the Northeast fishing industry to promote the development of commercial fishing and markets for underexploited species; develop methods for eliminating or reducing bycatch; and create new business and alternative employment opportunities for those who have been affected by the decline of the traditional fisheries.

**DATES:** Applications must be received by May 5, 1995. Applicants must submit one signed original and two copies of the complete application. No facsimile applications will be accepted. Generally, the time required to process applications is 120 days from the closing date of the solicitation.

**ADDRESSES:** Applications should be sent to the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298, telephone: (508) 281–9256 or (508) 281–9267. Application kits, with instructions for completion, may be obtained from that office.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Beal or Joyce Lacerda, NMFS, at (508) 281–9267.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the provisions of Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994, $30 million has been provided to the U.S. Department of Commerce (Department) for the Northeast Fisheries Assistance Program (NFAP) to address the needs of those directly affected by the decline of the traditional fisheries in the Northeast. Of the total package, $18 million has been designated to the Economic Development Administration to provide economic adjustment assistance to communities; $12 million has been designated to NMFS for direct industry assistance in the form of (1) loan guarantees under the Fisheries Obligation Guarantee Program to help restructure existing debt, (2) grants to assist the fishing industry which has been affected by the decline of the traditional groundfish and scallop fisheries and, (3) Fishing Family Assistance Centers in the Northeast to serve as clearinghouses for all possible assistance available from Federal and state sources.

Of the $12.0 million in NFAP funds administered by NMFS $9.0 million is being provided directly to the private sector through grants under the FIG Program, which is authorized under 15 U.S.C. 713c–3(d). These grants are being provided in two rounds. The availability of $4.5 million for the first round was announced in the **Federal Register** on July 8, 1994 (59 FR 35107). In response to that notice, 201 proposals were received. Of those 201 proposals, 28 were recommended for funding. Eleven of the 28 projects will address development of commercial fisheries and markets for underexploited finfish and shellfish species; nine will focus on aquaculture as a method for enhancing natural production of groundfish and shellfish stocks, and also as a commercial enterprise; and eight will explore various aspects of new business opportunities for displaced fishermen. Federal support for these projects ranges from $20,000 to $654,900, with an average Federal funding level of $160,714.

Since July 1994, when the first round of the FIG Program was implemented, the situation with respect to the New England groundfish stocks has worsened. As recent stock assessments indicated that groundfish populations were on the verge of collapse, NMFS approved the New England Fishery Management Council's request for implementation of emergency regulations while a more comprehensive plan is developed to restore the stocks. In recognition of the adverse impact of further reductions in fisheries access on the fishing industry, the second round of the FIG Program, through which $4.5 million will be provided, will

emphasize short-term assistance for those directly dependent upon groundfish and other traditional Northeast Fishery resources.

Additional consideration will be given to those applications under this solicitation that include participation by individuals who own or operate fishing vessels permitted under the Magnuson Fishery Conservation and Management Act (Magnuson Act)(i.e., participants in the New England Groundfish fishery), and who agree to tender their privilege to harvest regulated multi-species finfish for the duration of the assistance period.

Through this notice, NMFS is soliciting applications for Federal assistance, and describing the conditions under which applications will be accepted for the second part of the FIG Program and how NMFS will select the applications it will fund.

## II. Funding Priorities

The following have been identified as priorities for part two of the FIG Program:

A. Develop projects/conduct activities to provide alternate employment or new business opportunities (e.g., through aquaculture or improved processing and expanded use of fish waste) for those who have been affected by the decline of the traditional fisheries.

B. Promote development of commercial fisheries and markets for underexploited species of the northwest Atlantic Ocean. For the purposes of this solicitation, underexploited species include, but are not limited to, red hake (Gulf of Maine to Mid-Atlantic); Atlantic herring (coastal stock complex); Atlantic mackerel (Labrador to North Carolina); butterfish (Gulf of Maine to the Mid-Atlantic); skates (Gulf of Maine to the Mid-Atlantic); and short-finned squid (*Illex*) (Gulf of Maine to the Mid-Atlantic). Note: If applicable, recipients must have the appropriate Federal fishing permits in their possession. Also, if applicable, obtaining an experimental fishing permit may be required prior to approval of project activities.

C. Develop methods for eliminating or reducing the inadvertent take, capture or destruction of nontargeted, protected, or prohibited species (e.g., juvenile or sublegal-sized fish and shellfish) in fishing operations through the technical development, demonstration, or evaluation of fishing gear or harvesting strategies.

Applications may be for demonstration or pilot projects, technology development and/or transfer, experimental fishing, or other activities to develop immediate and long-term employment or new business opportunities for the various segments of the fishing industry. Funding will not be provided for projects primarily involving construction or operational costs for individual businesses. Those seeking financial assistance for proprietary business activities, e.g., business loans, may contact the Family Assistance Centers listed in section III.A. of this document for information regarding other types of financial assistance.

The priorities contained in this solicitation provide potential applicants with a general sense of program focus and are not intended to limit or further constrain development of innovative proposals. Additional consideration (see section IV.A.2.f.) will be given to applications under this solicitation that include participation by individuals who own or operate fishing vessels permitted under the Magnuson Act (i.e., participants in the New England groundfish fishery) who agree to tender their privilege to harvest multispecies finfish for the duration of the project.

## III. How To Apply

### *A. Eligible Applicants*

Applications for assistance may be made, in accordance with the procedures set forth in this notice, by any individual who is a citizen or national of the United States, or any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802).

Federal Government agencies or employees, including full-time, part-time, and intermittent personnel (or their spouses or blood relatives who are members of their immediate households), are not eligible to submit an application under this solicitation.

Assistance from NMFS employees is available to eligible applicants, by telephone or through pre-proposal meetings, and will be limited to such issues as the program goals, funding priorities, application procedures, and responding to questions regarding completion of application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring competitive proposals. Pre-proposal meetings will be held at Fishing Family Assistance Centers located in Portland and Rockland, ME; Gloucester, New Bedford, and Chatham, MA; and Narragansett, RI. Details on specific times and location of pre-proposal meetings may be obtained by calling the NMFS Northeast Regional Office in Gloucester (508–281–9256 or 508–281–9267), or the nearest Fishing Family Assistance Center. The addresses and telephone numbers of all Fishing Family Assistance Centers are as follows:

Fishing Family Assistance Center, National Marine Fisheries Service, Federal Building, Room 200, 21 Limerock Street, Rockland, ME 04841; Tel: 207–594–2267.

Fishing Family Assistance Center, National Marine Fisheries Service, Marine Trades Center, Suite 311, 2 Portland Fish Pier, Portland, ME 04101; Tel: 207–780–3423.

Fishing Family Assistance Center, National Marine Fisheries Service, Department of Employment and Training, 11–15 Parker Street, Gloucester, MA 01930; Tel: 508–283–2863.

Fishing Family Assistance Center, National Marine Fisheries Service, 15–A Market Place, Chatham, MA 02633; Tel: 508–945–5492.

Fishing Family Assistance Center, National Marine Fisheries Service, Greater New Bedford Reemployment Career Services, 693 Purchase Street, New Bedford, MA 02740; Tel: 508–979–1750.

Fishing Family Assistance Center, National Marine Fisheries Service, 118 Point Judith Road, Narragansett, RI 02882; Tel: 401–782–8640.

### *B. Duration and Terms of Funding*

Generally, grants are awarded for a period of 1 year, but no more than 18 months at a time. Renewal of an award to increase funding, or to extend the period of performance, is at the total discretion of the Department.

If an application is selected for funding, the Department has no obligation to provide any additional future funding in connection with that award.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

### *C. Costsharing*

Sharing of project costs by applicants is not required and will not be considered in the technical evaluation of proposals. However, NMFS does encourage costsharing and will take into account the degree to which costsharing is provided in the final selection of projects to be funded. If costsharing is proposed, the applicant will be obligated to account for both the Federal and non-Federal amounts contained in the award document.

*D. Format*

This format for Phase II has been streamlined from that in Phase I. Proposals must identify the principal participants and include copies of any agreements between the participants and the applicant, describing the specific tasks to be performed. Project applications must be clearly and completely submitted in the format that follows. The forms described are available, with instructions for completion, from the Northeast Regional Office, NMFS (see **ADDRESSES**).

1. *Cover sheet*: An applicant must use Office of Management and Budget (OMB) Standard Form 424 (revised 4–92) as the cover sheet for each project. (Do not complete item 16 of Standard Form 424 (REV 4–92). NMFS will obtain for the applicant any necessary clearances by the State Single Point of Contact established as a result of E.O. 12372, Intergovernmental Review of Federal Programs, to which this program is subject.)

2. *Project summary*: An applicant must complete NOAA Form 88–204 (10–92), Project Summary, for each project. This form is required in addition to the Project Narrative described below. Those applications which are to receive additional consideration in the review process must include the following sentence in the upper left-hand corner of this form: ''If selected for funding, I agree to tender my privilege to fish for and retain regulated multispecies finfish for the duration of this project. My vessel name and permit number are _____.''

If an application involves more than one vessel, a similar statement for each vessel may be attached to the Project Summary sheet, with the signature of the appropriate vessel owner(s).

3. *Project budget*: A budget must be submitted for each project, using NOAA Form 88–205 (10–92), Project Budget. The applicants must submit cost estimates showing total project costs. Costsharing is discretionary, but if applicants choose to cost share, both the Federal and non-Federal shares must be shown, divided into cash and in-kind contributions. To support the budget, the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Estimates of the direct costs must be specified in the categories listed on the Project Budget form. The budget may also include an amount for indirect costs, if the applicant has an established indirect cost rate with the Federal Government. A copy of the current, approved, negotiated indirect Cost Agreement with the Federal Government must be included with the application, if applicable. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. This restriction also applies to any subrecipient of this program.

NMFS will not consider fees or profits as allowable costs for applicants.

The total costs of a project consist of all costs incurred in accomplishing project objectives during the life of the project. A project begins on the effective date of an award between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Generally, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are not reimbursable.

4. *Project narrative description*: The project must be completely and accurately described, as follows:

a. *Project goals and objectives*: State what the proposed project is expected to accomplish.

b. *Project statement of work*: The statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated goals and objectives.

(1) Describe in detail the project design. What work, activities, or procedures will be undertaken to produce anticipated results?

(2) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting).

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

c. *Project management*: Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. Provide a statement of experience and qualifications for the Principal Investigator(s). If any portion of the project will be conducted through consultants and/or subcontractors, applicants must follow procurement guidance in 15 CFR part 24, ''Grants and Cooperative Agreements to State and Local Governments,'' and OMB Circular A-110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. Commercial organizations and individuals which apply should use OMB Circular A–110. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection. If a consultant and/or subcontractor has been selected as a ''sole source,'' a justification must be provided giving the unique qualifications for the selection.

d. *Project impacts*: Describe the anticipated impacts of the project in terms of increased employment, increased landings, processing, and sales of underutilized species, or other measurable factors. Describe how the results of the project will be made available to the public.

e. *Federal, state, and local government activities*: List any existing Federal, state, or local government programs or activities that this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

5. *Supporting documentation*: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed.

## IV. Evaluation Criteria and Selection Procedures

*A. Evaluation of Proposed FIG Projects*

1. *Consultation with interested parties*: NMFS will evaluate applications in consultation with NMFS Offices, the NOAA Grants Management Division, and, as appropriate, Department and other Federal agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and others outside NMFS who have knowledge in the subject matter of a project or who would be affected by a project. The Regional Fishery

Management Councils may be asked to review applications that could affect a managed fishery, the bycatch of a managed fishery, or a fishery management issue.

2. *Technical evaluation*: NMFS will solicit technical evaluations of each project application from appropriate private and public sector experts. Point scores will be given to project applications, based on the following evaluation criteria:

a. *Problem description and concept for problem resolution*. The applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (20 points)

b. *Soundness of project design/ technical approach*. Applications will be evaluated as to the soundness of the project design and the adequacy of the technical approach as it relates to achieving the stated goals and objectives. What are the proposal's strengths and weaknesses? (25 points)

c. *Project management and experience and qualifications of personnel*. The organization and management of the project and the project's Principal Investigator and other key personnel in terms of related experience and qualifications will be evaluated. Those projects that do not identify the Principal Investigator with his or her qualifications will receive a lower point score. (20 points)

d. *Project costs*. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high project costs will be taken into account. (15 points)

e. *Project impacts*. The degree to which alternative employment or business opportunities are created for those dependent upon traditional Northeast fisheries resources will be evaluated. For example, will displaced fishermen be employed during the project period and beyond? (20 points)

f. *Tendering of multispecies harvesting privileges*. Applicants who are willing to tender these privileges for the assistance period will be given an additional 10 points.

g. In addition to the above criteria, in reviewing applications that include consultants and contracts, NMFS will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

3. *Constituent panel review*: After the technical evaluation, comments will be solicited individually from members of a panel of at least three representatives, selected by the Assistant Administrator for Fisheries, NOAA (AA), from the fishing industry, state government, and others, as appropriate, to rank the projects. Considered in the rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. Each panelist will individually rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

*B. Selection Procedures and Project Funding*

After projects have been evaluated and ranked, the Director, Northeast Region, NMFS, will develop recommendations for project funding. These recommendations will be submitted to the AA, who will determine the number of projects to be funded, ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The funding instrument will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received.

## V. Administrative Requirements

*A. Obligation of the Applicant*

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. *Primary applicant certification*. Applicants whose applications are recommended for funding will be required to submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

a. *Nonprocurement debarment and suspension*. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

b. *Drug-free workplace*. Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

c. *Anti-lobbying*. Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. *Anti-lobbying disclosure*. Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

4. *Lower tier certifications*. Successful applicants shall require applicants/ bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF-LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

*B. Other Requirements*

1. *Federal policies and procedures*. Recipients and subrecipients are subject to all Federal laws and Federal and Department policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review*. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such

as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

3. *Financial management certification/preaward accounting survey*. Successful applicants at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a pre-award accounting survey by the Department prior to execution of the award.

4. *Past performance*. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. *Delinquent Federal debts*. No award of Federal funds shall be made to an applicant or to its subrecipients who have an outstanding delinquent Federal debt or fine until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department are made.

6. *Buy American-made equipment or products*. Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, sections 607(a) and (b).

7. *Pre-award activities*. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

## Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, OMB Control Number 0648–0135. Public reporting burden for preparation of the grant application is estimated to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., Rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, Attention: NOAA Desk Officer.

**Authority:** 15 U.S.C. 713c–3(d).

Dated: March 1, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

[FR Doc. 95–5399 Filed 3–1–95; 3:56 pm]

BILLING CODE 3510–22–F

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# CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

## Special Demonstration Project, Availability of Funds

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Corporation for National Service (the Corporation) announces the availability of up to $100,000 for service/development projects to meet significant human needs in the Yukon-Kuskokwim Delta of Alaska. Any Indian tribe, public or private non-profit organization, or institution of higher education that has formed a partnership with the Yukon-Kuskokwim Health Corporation and/or the Alaska Village Council Presidents is eligible to apply. The Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents are also eligible to apply.

**DATES:** Applications must be received by 3:30 p.m. Daylight Savings Time, April 20, 1995, to be eligible.

**ADDRESSES:** Applications must be mailed to the attention of Peg Rosenberry, PO Box YK, Corporation for National Service, 1201 New York Ave., NW, Washington, DC 20525. Facsimiles will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the application process or you would like to receive an application packet, you may call or write Lisa Bloch at the Corporation for National Service, 1201 New York Ave. N.W., Washington, DC 20525. Phone: (202) 606–5000 ext. 140.

**SUPPLEMENTARY INFORMATION:** The Corporation announces the availability of up to $100,000 for service/development projects to meet significant human needs in the Yukon-Kuskokwim Delta of Alaska. These programs should meet the needs of the region in health, education, environmental revitalization and/or public safety. Specific strategies must be developed in cooperation with the Yupi'k speaking population residing in the Delta for comprehensive and intensive community development. Organizations wishing to incorporate AmeriCorps*VISTA or AmeriCorps*USA Members into their plans should request the requirements for these programs from the Corporation through the phone number listed above. Organizations can apply for funds to plan and/or operate programs. Grants may cover a period of six months to one year, depending on the nature (planning or operating) and scope of the projects. Additional funds for longer-term operation may be available in early Fall and will be announced in the **Federal Register**.

The Corporation will accept applications from any Indian tribe, public or private non-profit organization, or institution of higher education that has formed a partnership with the Yukon-Kuskokwim Health Corporation and/or the Alaska Village Council Presidents. The applications should describe a plan to implement comprehensive and intensive community development/ community service programs by using AmeriCorps*VISTA Members, individuals who have served in the Peace Corps, and other qualified individuals. The applications should take into consideration (1) the primarily non-cash economy of the region; and (2) the needs and desires of residents of the local communities in the region.

**Authority:** 42 U.S.C. 12501 *et seq.*

Dated: March 1, 1995.

**Terry Russell,**

*General Counsel.*

[FR Doc. 95–5396 Filed 3–3–95; 8:45 am]

BILLING CODE 6050–28–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Availability of Public Comments for Viewing and Extension of Hours of Hearing and the Deadline for Submitting Testimony

March 2, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice of availability of public comments, extension of hours of the public hearing and extension of the deadline for submitting testimony for the public hearing on integration.

**FOR FURTHER INFORMATION CONTACT:** Julie Carducci, Office of Textiles and Apparel, U.S. Department of Commerce, (202)482–3588.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Uruguay Round Agreement on Textiles and Clothing (ATC), approved by Congress as part of the Uruguay Round Agreements Act, provides for the integration of the textiles and clothing sectors into the World Trade Organization.

On January 30, 1995, the Committee for the Implementation of Textile Agreements (CITA) published a Federal Register notice (60 FR 5625) announcing the proposed list of products for integration in the second and third phases of the integration. CITA requested interested parties to submit comments on the proposed list and announced a hearing to address any significant issues related to the second and third phases of the integration. Comments submitted in response to 60 FR 5625 will be available for public viewing as of the date of publication of this notice. Parties wishing to view the comments should contact Julie Carducci to make an appointment.

The deadline for submitting testimony to be presented at the public hearing on integration on March 20, 1995, will be extended (from the original deadline of on or before March 2) to March 15, 1995. Therefore, all written testimony and other comments to be presented at the hearing must be received in triplicate by the Chairman of CITA on or before March 15, 1995. Submissions in triplicate should be addressed to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

The length of the hearing on integration has been extended three hours, and will now be held from 10 a.m. to 4 p.m. on March 20, 1995, in the Main Commission Hearing Room at the International Trade Commission, 500 E Street, SW., Washington, DC.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 95–5497 Filed 3–2–95; 10:54 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Commission on Roles and Missions of the Armed Forces

**AGENCY:** Department of Defense, Commission on Rules and Missions of the Armed Forces.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces.

The Commission is charged with providing an independent review of the roles and missions of the armed services to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. The purpose of this meeting is to discuss some of the specific roles and missions issues that are being developed for consideration by the Commission. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

**DATES:** March 11, 1995.

**SUPPLEMENTARY INFORMATION:** Extraordinary circumstances compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: February 28, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–5310 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–4–M

### Office of the Secretary of Defense

### Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Department of Defense, Advisory Group on Electron Devices.

**ACTION:** Notice.

**SUMMARY:** Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Thursday, March 9, 1995.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Cheri Spencer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 28, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–5312 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–04–M

### Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Department of Defense, Advisory Group on Electron Devices.

**ACTION:** Notice.

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Thursday, 23 March 1995.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Department propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 11§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 28, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–5313 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–04–M

## Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Department of Defense, Advisory Group on Electron Devices.

**ACTION:** Notice.

**SUMMARY:** Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Tuesday and Wednesday, 21–22 March 1995.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 28, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–5314 Filed 3–3–95; 8:45 am]

BILLING CODE 5000–04–M

# Department of the Air Force

## Notice of Intent to Prepare an Environmental Assessment for the Disposal and Reuse of Newark AFB, OH

The United States Air Force is issuing this notice to advise the public that the Air Force intends to prepare an environmental assessment (EA) to assess the potential environmental impacts of the disposal and reuse of Newark AFB identified for closure under the Base Closure and Realignment Act of 1990 as amended. This notice amends the **Federal Register** Notice of October 28, 1993 which stated that an Environmental Impact Statement (EIS) would be prepared for the disposal and reuse of Newark AFB.

The Air Force conducted a public scoping meeting on May 10, 1994 at the Heath City Hall, Heath, OH. This meeting had been previously publicized in a **Federal Register** Notice dated May 5, 1994. The proposed action is now well-defined and consists of a continuation of the existing activities at Newark AFB under the privatization-in-place initiative which means that the current workload performed by the Air Force will be performed by the private sector. Based on this information, lack of environmental issues raised at the scoping meeting, and environmental baseline data collected to date, preparation of an environmental assessment is reasonable.

The environmental assessment might lead to issuance of a Finding of No Significant Impact(FONSI) if supported by the environmental impact analysis. If significant environmental impacts are identified during the environmental analysis process, an EIS will be prepared. The Air Force will publish another notice in the **Federal Register** notifying the public of the FONSI or of the intent to prepare an EIS.

Please direct requests for further information concerning the Newark AFB disposal and reuse environmental assessment to: Lt Col Terry D. Armstrong, HQ AFCEE/EC, 8106 Chennault Road, Brooks AFB, TX 78235–5318, (210) 536–3907

### List of Subjects

Environmental Protection, Environmental Impact Statement, Environmental Assessment, US Air Force, Newark AFB, Defense Base Closure and Realignment.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–5308 Filed 3–3–95; 8:45 am]

BILLING CODE 3910–01–P

## USAF Scientific Advisory Board; Meeting

The Information Technology and Applications Panels of the USAF Scientific Advisory Board will meet on 21–21 March 1995 at The ANSER Corporation, Arlington, VA from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to provide science and technology assessments on issues relating to

information technology and applications.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–5393 Filed 3–3–95; 8:45 am]

BILLING CODE 3910–01–P

## Department of the Air Force

### USAF Scientific Advisory Board; Meeting

The Electronics Panel of the USAF Scientific Advisory Board will meet on 3–7 April 1995 at Wright Patterson, AFB, OH from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to provide science and technology assessments on issues relating to electronics.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 95–5394 Filed 3–6–95; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Navy

### Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment)

### Community Redevelopment Authority and Available Surplus Buildings and Property at Military Installations Designated for Closure: Naval Air Station, Agana, Guam

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Agana, Guam, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

**FOR FURTHER INFORMATION CONTACT:** John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; telephone: (703) 325–0474; or J. M. Kilian, Director, Real Estate Division, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300; telephone: (808) 471–3217. For detailed information regarding particular properties identified in this Notice (i.e. acreage, floorplan, sanitary facilities, exact street address, etc.), contact Commander Modesto Martinez, Caretaker Site Officer, Naval Air Station, PSC 456, FPO AP 96539; telephone: (671) 344–4125 and facsimile: (671) 344–4138.

**SUPPLEMENTARY INFORMATION:** In 1993, the Naval Air Station, Agana, Guam was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on October 14, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

#### Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 20, 1994, the Governor of Guam submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Station, Agana, is published in the **Federal Register**:

#### Redevelopment Authority

The redevelopment authority for the Naval Air Station, Agana, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Government of Guam whose chief executive officer is the Governor of Guam. The Governor has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing air station. This committee is known as the ''Komitea Para Tiyan'' and is chaired by the Lieutenant Governor. A cross section of community interests is represented on the commission. Day to day operations of the committee are handled by a Project Manager. The address of the committee is Komitea Para Tiyan, P.O. Box 2950, Agana, Guam 96910; telephone: (671) 472–4201/3 and facsimile: (671) 477–1812.

#### Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Air Station, Agana that were declared surplus to the federal government on October 14, 1994 (Note: As the redevelopment authority submitted a timely request to proceed under the new procedures, the surplus determination date is now treated as December 20, 1994, pursuant to Section 2(e)(2) of the new statute):

#### Land

Approximately 1,654 acres of improved and unimproved fee simple land at the U.S. Naval Air Station, Agana, in the central portion of the Territory of Guam.

#### Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on April 1, 1995, unless otherwise indicated. Property numbers are available on request.

—Aircraft support facilities (11 structures). Comments: Approx. 174,842 square feet. Line shacks, four hangars, and two emergency generator sheds.

—Ammunition storage (9 structures). Comments: Approx. 12,726 square feet.

—Bachelor quarters housing (16 structures). Comments: Approx. 207,056 square feet. Most structures have individual rooms.

—Blast/sludge facilities (2 structures). Comments: Approx. 84,000 square feet.
—Child care facility (1 structure). Comments: Approx. 4,440 square feet.
—Communication and electronic facility (1 structure). Comments: Approx. 907 square feet.
—Family housing units (176 duplex structures with 352 individual housing units). Comments: Approx. 292,160 square feet. Anticipate all units will be vacated by end of July 1995.
—Fire protection facilities (2 structures). Comments: Approx. 15,636 square feet.
—Fuel storage facilities (4 structures). Comments: Approx. 1,260,000 gallon storage capacity.
—Hazardous storage facilities (9 structures). Comments: Approx. 4,378 square feet.
—Industrial buildings (8 structures). Comments: Approx. 6,559 square feet.
—Library (1 structure). Comments: Approx. 13,032 square feet.
—Maintenance facilities (6 structures). Comments: Approx. 39,057 square feet. Shop buildings.
—Mess and dining facilities (3 structures). Comments: Approx. 59,708 square feet. Club facility, cafeteria, and enlisted mess hall.
—Miscellaneous facilities (18 structures). Comments: Approximately 6,508 square feet. Small buildings and bus waiting sheds.
—Office/administration buildings (4 structures). Comments: Approx. 57,852 square feet.
—Paved areas (5 structures). Comments: Approx. 1,832,035 square feet. Roads, parking areas, sidewalks, etc.
—Photography laboratory (1 structure). Comments: Approximately 18,700 square feet.
—Recreational facilities (11 structures). Comments: Approx. 41,446 square feet. Gymnasium, theater, hobby shop, picnic sheds, and softball fields.
—Stores and services facilities (6 structures). Comments: Approx. 43,401 square feet. Small retail facilities.
—Utility facilities (60 structures). Comments: Measuring systems vary. Telephone, electric, steam, and water utility systems.
—Warehouse/storage facilities (5 structures). Comments: Approx. 3,737 square feet.

**Expressions of Interest**

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Agana, shall submit to said redevelopment authority (Government of Guam) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Guam the date by which expressions of interest must be submitted. Under Section 2(e)(6) of said Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one month nor more than 6 months from the date the Governor of Guam elected to proceed under the new statute, i.e., December 20, 1994.

Dated: February 16, 1995.

**M. D. Schetzsle,**

*LT, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 95–5307 Filed 3–3–95; 8:45 am]

BILLING CODE 3810–FF–P

## Notice of Public Hearing for the Draft Environmental Impact Statement for Disposal and Reuse of the Former Naval Hospital; Philadelphia, PA

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508), implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for disposal and reuse of the former Naval Hospital at Philadelphia, Pennsylvania.

In accordance with legislative requirements in the 1990 Base Closure and Realignment Act (Public Law 101–510) and the results of the 1988 Base Closure and Realignment Process, Naval Hospital Philadelphia was directed to be closed and made available for reuse. The former Naval Hospital Philadelphia is located in the southern portion of the city of Philadelphia. The Base encompasses approximately 49 acres of land and includes a total of 59 buildings and structures.

The proposed action addressed in the DEIS is the disposal and subsequent redevelopment of lands/facilities determined surplus to the needs of the Federal Government. A Community Reuse Plan was prepared by the Mayor of Philadelphia's Commission on Defense Conversion, which included representation of local groups and organizations from throughout the region. The Preferred Redevelopment Plan proposes demolition of existing structures on the former Naval Hospital property and identifies areas to be redeveloped for a nursing home, development of market-rate townhomes, and expansion of the adjacent FDR Park including new parking area.

In the preparation of the Reuse Plan, consideration was given to the possible reuse of the Property Base by other Federal, State, and local agencies, homeless support organizations, business interests and recreational users. Various reuse scenarios were developed by the Commission, and a preferred Reuse Plan was identified and approved by the Commission following public review and evaluation. The DEIS has been prepared to address environmental consequences of implementing the comprehensive Reuse Plan. Potential impacts addressed include, but are not limited to, community services, traffic, air quality, water quality, vegetation and wildlife, cultural resources, noise and land use.

The DEIS has been distributed to various Federal, State, and local agencies, elected officials, special interest groups, libraries and the media. A limited number of single copies are available at the address listed at the end of this notice.

The Department of the Navy will hold a public hearing to inform the public of the DEIS findings and to solicit comments. The hearing will be held at 7:30 p.m. on Wednesday, March 22, 1995, at the Holy Spirit Church Hall, 1835 Hartranft Street, Philadelphia, Pennsylvania. Should inclement weather preclude holding the public scoping meeting on this date, the alternate date for the meeting will be Thursday, March 23, 1995 (meeting to be held at the same location). If there is any question of meeting date in the event of inclement weather, contact the person listed at the end of this notice for confirmation. The public hearing will continue until 10:30 p.m. or until the conclusion of public comments. The public hearing will be conducted by the Navy. Federal, State, and local agencies and interested parties are invited and urged to attend or be represented at the

hearings. Oral statements will be heard and transcribed by a stenographer; however, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record and equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their remarks to five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by Tuesday, April 18, 1995, to become part of the official record.

Additional information concerning this notice may be obtained by contacting the Commanding Officer, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, PA 19113 (Attn: Mrs. Tina Deininger, Code 202), telephone 610–595–0759.

Dated: March 1, 1995.

**L.R. McNees,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 95–5370 Filed 3–3–95; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EF95–5071–000 et al.]**

## Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

February 27, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Western Area Power Administration

[Docket No. EF95–5071–000]

Take notice that on February 17, 1995, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–65, did confirm and approve on an interim basis, the Western Area Power Administration's (Western), formula for determining annual revenue requirements for electric power sold from the Provo River Project (PRP), effective April 1, 1995.

The formula for revenue recovery will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of a substitute procedure on a final basis, through March 31, 2000.

*Comment date:* March 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–175–000]

Take notice that on February 14, 1995, Consolidated Edison Company of New York, Inc. (''Con Edison''), tendered for filing an amendment to its agreement with Long Island Lighting Company (''LILCO''), to provide for the purchase and sale of energy and capacity subject to cost based ceiling rates.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

*Comment date:* March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 3. Eastern Power Distribution, Inc.

[Docket No. ER94–964–004]

Take notice that on February 9, 1995, Eastern Power Distribution, Inc. (EPDI), filed certain information as required by the Commission's April 5, 1994, letter order in Docket No. ER94–964–000. Copies of EPDI's informational filing are on file with the Commission and are available for public inspection.

### 4. Electric Clearinghouse, Inc.

[Docket No. ER94–968–004]

Take notice that on January 30, 1995, Electric Clearinghouse, Inc. (ECI), filed certain information as required by the Commission's April 7, 1994, letter order in Docket No. ER94–968–000. Copies of ECI's informational filing are on file with the Commission and are available for public inspection.

### 5. Eclipse Energy, Inc.

[Docket No. ER94–1099–003]

Take notice that on January 26, 1995, Eclipse Energy, Inc. (Eclipse), filed certain information as required by the Commission's June 15, 1994, letter order in Docket No. ER94–1099–000. Copies of Eclipse's informational filing are on file with the Commission and are available for public inspection.

### 6. Vesta Energy Alternatives Company

[Docket No. ER94–1168–003]

Take notice that on February 3, 1995, Vesta Energy Alternatives Company (Vesta), filed certain information as required by the Commission's July 8, July 20, November 28 and December 7, 1994, letter orders in Docket No. ER94–1168–000. Copies of Vesta's informational filing are on file with the Commission and are available for public inspection.

### 7. CMEX Energy, Inc.

[Docket No. ER94–1328–002]

Take notice that on January 23, 1995, CMEX Energy, Inc. (CMEX), filed certain information as required by the Commission's July 12, 1994, letter order in Docket No. ER94–1328–000. Copies of CMEX's informational filing are on file with the Commission and are available for public inspection.

### 8. Texas-Ohio Power Marketing, Inc.

[Docket No. ER94–1676–001]

Take notice that on January 24, 1995, Texas-Ohio Power Marketing, Inc. (Texas-Ohio), filed certain information as required by the Commission's October 31, 1994, letter order in Docket No. ER94–1676–000. Copies of Texas-Ohio's informational filing are on file with the Commission and are available for public inspection.

### 9. Equitable Power Services Company

[Docket No. ER94–1539–002]

Take notice that on January 27, 1995, Equitable Power Services Company (EPSC), filed certain information as required by the Commission's September 8, 1994, letter order in Docket No. ER94–1539–000. Copies of EPSC's informational filing are on file with the Commission and are available for public inspection.

### 10. Hadson Electric, Inc.

[Docket No. ER94–1613–001]

Take notice that on January 27, 1995, Hadson Electric, Inc. (Hadson), filed certain information as required by the Commission's November 17, 1994, letter order in Docket No. ER94–1613–000. Copies of Hadson's informational filing are on file with the Commission and are available for public inspection.

### 11. St. Joseph Light & Power Company

[Docket No. ER95–294–000]

Take notice that on February 16, 1995, St. Joseph Light & Power Company (SJLP), submitted for filing an Amendment to the Non-Firm Transmission Service Agreement between SJLP and Rainbow Energy Marketing Corporation filed previously with the Commission on December 19, 1994, in the above-referenced docket.

*Comment date:* March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 12. Southern Indiana Gas and Electric Company

[Docket No. ER95–600–000]

Take notice that on February 14, 1995, Southern Indiana Gas and Electric Company (Southern Indiana), tendered for filing Amendments to Coordination

Rates in its Interconnection Agreement with Alcoa Generating Corporation to Reflect the Costs of Emissions Allowances for FERC Rate Schedule No. 0029. A copy of the filing has been sent to Alcoa Generating Corporation.

The proposed Amendment to the Rate Schedule is being made by an abbreviated filing under FPA Section 205 and pursuant to the Commission's Interim Rate issued in Docket No. PL95–1–000, Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates and provides for cost recovery of $SO_2$ emissions allowances in energy sales. These amendments are limited to coordination sales tariffs contained in the Agreement.

Waiver of the Commission's Notice Requirement is requested to allow for an effective date of January 1, 1995, and Southern Indiana agrees to the refund condition for allowance related charges assessed between January 1, 1995, and the date the Commission issues an order accepting the filing.

*Comment date:* March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. Jersey Central Power & Light Company**

**Metropolitan Edison Company**

**Pennsylvania Electric Company**

[Docket No. ER95–601–000]

Take notice that on February 14, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the ''GPU Operating Companies''), filed an executed Service Agreement between GPU and Electric Clearinghouse, Inc. (Electric Clearinghouse), dated January 21, 1995. This Service Agreement specifies that Electric Clearinghouse has agreed to the rates, terms and conditions of the GPU Operating Companies'' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company,* Docket No. ER95–276–000 and allows GPU and Electric Clearinghouse to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of January 21, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

*Comment date:* March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. Central Illinois Light Company**

[Docket No. ER95–602–000]

Take notice that on February 15, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a Coordination Sales Tariff. Under the Coordination Sales Tariff, CILCO will make Limited Term Power, Short-Term Power, General Purpose Energy and Emergency Energy available to customers upon mutual agreement. CILCO requests an effective date of April 3, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served on the Illinois Commerce Commission and are available for public inspection at CILCO's offices in Peoria, Illinois.

*Comment date:* March 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. Northeast Utilities Service Company**

[Docket No. ER95–620–000]

Take notice that Northeast Utilities Service Company (NUSCO) on February 17, 1995, tendered for filing, a Service Agreement with Pennsylvania Power & Light Company (PP&L) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to PP&L.

NUSCO requests that the Service Agreement become effective on March 1, 1995.

*Comment date:* March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. Arizona Public Service Company**

[Docket No. ER95–621–000]

Take notice that on February 17, 1995, Arizona Public Service Company (APS), tendered for filing the proposed Power Sale Agreement (Agreement) between APS and Nevada Power Company (NPC) having a proposed effective date of June 1, 1995.

The Agreement proposes that APS will make available to NPC, when pre-scheduled by NPC, 50 MW of firm power and energy for the period June 1, through September 30 for each of the calendar years 1995, 1996 and 1997. The rate for sales under the Agreement contains a Capacity Charge component and an Energy Charge component.

A copy of this filing has been served on NPC, the Arizona Corporation Commission and the Nevada Public Service Commission.

*Comment date:* March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**17. Orange and Rockland Utilities, Inc.**

[Docket No. ER95–622–000]

Take notice that on February 17, 1995, Orange and Rockland Utilities, Inc. (Orange and Rockland), One Blue Hill Plaza, Pearl River, New York 10965, submitted for filing proposed rates and other changes applicable to future service contracts executed under Orange and Rockland's FERC Electric Tariff Original Volume (Buyback Tariff). The Buyback Tariff provides for Orange and Rockland to purchase capacity and associated energy from certain Orange and Rockland customers. In addition to the new rates, the filing would reduce the maximum amount of loans available to participating customers and would modify the number and duration of opportunities for qualifying customers to sell to Orange and Rockland. Orange and Rockland has requested that the proposed changes become effective as of the date of the filing.

*Comment date:* March 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

**18. Midwest Power Systems Inc.**

[Docket No. ES95–22–000]

Take notice that on February 23, 1995, Midwest Power Systems Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue up to $250 million of promissory notes during the period commencing April 16, 1995 and ending April 15, 1997, with a final maturity date not later than April 15, 1998.

*Comment date:* March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

**19. White Oak Energy Company L.L.C. (Lockport Project)**

[Docket No. QF95–122–000]

On February 22, 1995, White Oak Energy Company L.L.C. (White Oak) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure and technical aspects of White Oak's small power production facility. No determination has been made that the submittal constitutes a complete filing.

*Comment date:* March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

**20. White Oak Energy Company L.L.C. (Joliet Project)**

[Docket No. QF95–123–000]

On February 22, 1995, White Oak Energy Company L.L.C. (White Oak) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure and technical aspects of White Oak's small power production facility. No determination has been made that the submittal constitutes a complete filing.

*Comment date:* March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

**21. Osceola Power Limited Partnership**

[Docket Nos. QF95–30–000 and QF95–30–001]

On February 24, 1995, Osceola Power Limited Partnership tendered for filing an amendment to its December 2, 1994, filing in this docket.

The amendment pertains to technical requirements and the ownership structure of the cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

*Comment date:* March 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**22. Western Systems Power Pool**

[Docket No. ER91–195–019]

Take notice that on February 16, 1995, Western Systems Power Pool (WSPP), tendered for filing revised copies of its quarterly report for the fourth quarter of 1994 in the above-referenced docket.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–5384 Filed 3–3–95; 8:45 am]

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**[Docket No. EC94–23–000 et al.]**

## Washington Water Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 24, 1995.

Take notice that the following filings have been made with the Commission:

**1. Washington Water Power Company**

[Docket No. EC94–23–000]

Take notice that February 14, 1995, Washington Water Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**2. Southern California Edison Company**

[Docket Nos. ER82–427–013 and ER83–301–003]

Take notice that on February 15, 1995, Southern California Edison Company tendered for filing its refund report in the above referenced dockets.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**3. PSI Energy, Inc.**

[Docket No. ER89–672–008]

Take notice that on January 18, 1995, PSI Energy, Inc. (PSI) filed certain information as required by the Commission's order issued on June 28, 1990 [51 FERC ¶61,367 (1990)], and pursuant to Section T of their Transmission Service Tariff. Copies of PSI's informational filing are on file with the Commission and are available for public inspection.

**4. Morgan Stanley Capital Group, Inc.**

[Docket No. ER94–1384–003]

Take notice that on January 31, 1995, Morgan Stanley Capital Group, Inc. (Morgan Stanley) filed information as required by the Commission's November 8, 1994 order in Docket No. ER94–1384–000. Copies of Morgan Stanley's filing are on file with the Commission and are available for public inspection.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. AIG Trading Corporation**

[Docket No. ER94–1691–003]

Take notice that on February 17, 1995, AIG Trading Corporation (AIGTC) tendered for filing Revised AIG Trading Corporation FERC Rate Schedule No. 1, and requested waiver of the 60-day prior notice requirement. The purpose of the filing is to clarify that no sales will be made under the rate schedule to any affiliate of AIGTC.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Northeast Regional Transmission Association**

[Docket No. ER95–19–000]

Take notice that February 17, 1995, Northeast Regional Transmission Association tendered for filing an amendment in the above-referenced docket.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Century Power Corporation**

[Docket No. ER95–367–000]

Take notice that on February 23, 1995, Century Power Corporation tendered for filing a revised Notice of Cancellation. Century states that effective March 17, 1995 the following Rate Schedules will be cancelled:

FERC Rate Schedule No. 10
FERC Rate Schedule No. 12
FERC Rate Schedule No. 14
FERC Rate Schedule No. 15

Century Power Corporation is also cancelling, effective March 17, 1995, Service Agreements Nos. 1 through 23 contained in Century Power Corporation's FERC Tariff No. 1.

The following rate schedules and service agreements will remain in effect: FERC Rate Schedules 1, 17 and 18 and Service Agreements 24 and 25 under Tariff No. 1.

*Comment date:* March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Tenneco Energy Marketing Company**

[Docket No. ER95–428–000]

Take notice that on February 16, 1995, Tenneco Energy Marketing Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Wisconsin Power and Light Company**

[Docket No. ER95–451–000]

Take notice that on February 10, 1995, Wisconsin Power and Light Company

(WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Midcon Power Services Corp. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of December 14, 1994.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**10. Baltimore Gas and Electric**

[Docket No. ER95–466–000]

Take notice that Baltimore Gas and Electric Company (BGE), on February 22, 1995, tendered for filing a revision to its January 23, 1995 filing of the Short-Term Energy Transactions Agreement between Public Service Electric and Gas Company and BGE in the above-captioned docket. The revision modifies Exhibit III of the filing to clarify the application of daily and weekly Maximum Reservation Charges.

BGE has requested waiver of the Commission's notice requirements to allow for an effective date of January 25, 1995 as originally requested.

*Comment date:* March 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. Conowingo Power Company**

[Docket No. ER95–555–000]

Take notice that on February 6, 1995, Delmarva Power & Light Company (Delmarva) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 70 between Delmarva and Conowingo Power Company.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**12. Tennessee Power Company**

[Docket No. ER95–581–000]

Take notice that on February 10, 1995, Tennessee Power Company (TPCO) petitioned the Commission for acceptance of TPCO Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations. TPCO is not affiliated with any entity which owns, operates, or controls electric power generating or transmission facilities, or that has a franchised electric power service area.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. Northern Indiana Public Service Company**

[Docket No. ER95–582–000]

Take notice that on February 10, 1995, the Northern Indiana Public Service Company (Northern) tendered for filing Addenda to each of Northern's seven coordination agreements on file with the Commission.

The Addenda detail Northern's method for recovery of emission allowance costs in coordination power sales. Northern requests an effective date of January 1, 1995, and has requested a waiver of the filing date and leave to file instanter, along with a waiver of the Commission's notice requirements.

A copy of the filing was served by Northern upon the affected companies listed in Exhibit 1 to Northern's filing and the Indiana Utility Regulatory Commission.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. Wisconsin Public Service Corporation**

[Docket No. ER95–583–000]

Take notice that on February 10, 1995, Wisconsin Public Service Corporation tendered for filing an executed service agreements with AES Power Inc. and Intercoast Power Marketing Company, under its CS–1 Coordination Sales Tariff.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. Northeast Utilities Service Company**

[Docket No. ER95–584–000]

Take notice that on February 10, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company and Public Service Company of New Hampshire, a System Power Sales Agreement (Agreement) to provide system capacity and associated energy to Sterling Municipal Light Department and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Long-Term Firm Transmission Service No. 1 for this Sales Agreement.

NUSCO requests that the rate schedule become effective on May 1, 1995. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreements and the affected state utility commission.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. Public Service Company of Colorado**

[Docket No. ER95–585–000]

Take notice that on February 10, 1995, Public Service Company of Colorado (Public Service) tendered for filing a revised exhibit to its Contract No. 87–LAO–285 which is its contract for the ownership, use, operation, maintenance, and replacement of the Ault Substation and other related facilities with the Western Area Power Administration (Western), Tri-State Generation and Transmission Association, Inc. (Tri-State), Platte River Power Authority (PRPA) and Basin Electric Power Cooperative (Basin), as contained in Public Service's Rate Schedule FERC No. 67. The proposed revision was made to provide for Tri-State to have backup supervisory control of the Ault Substation. The proposed revision will have no impact on the rates or revenues collected for service under this rate schedule.

Public Service requests an effective date of January 13, 1995, for the revised exhibit.

Copies of the filing were served upon Western, Tri-State, PRPA, Basin and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**17. Midwest Power System Inc.**

[Docket No. ER95–586–000]

Take notice that on February 10, 1995, Midwest Power System Inc. tendered for filing a Notice of Cancellation of FERC Rate Schedule 49.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**18. Midwest Power System Inc.**

[Docket No. ER95–587–000]

Take notice that on February 10, 1995, Midwest Power System Inc. tendered for filing a Notice of Cancellation of FERC Rate Schedule 54.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**19. Consolidated Edison Company of New York, Inc.**

[Docket No. ER95–588–000]

Take notice that on February 10, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Electric Clearinghouse, Inc. (ECI) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per kWhr when the SIC in the hour reflects a purchased power

resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. For energy and capacity sold by ECI the rates will be market based.

Con Edison states that a copy of this filing has been served by overnight delivery upon ECI.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**20. Rochester Gas and Electric Corporation**

[Docket No. ER95–589–000]

Take notice that on February 10, 1995, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and Rainbow Energy Marketing Corporation. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 C.F.R. § 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**21. West Penn Power Company**

[Docket No. ER95–591–000]

Take notice that on February 7, 1995, Allegheny Power Service Corporation, on behalf of West Penn Power Company, submitted Supplement No. 2 to its 1994 Wholesale Customer Rate Change to add to the public record documents intended to clarify the terms of the Settlement Agreement and to establish operating procedures for providing service under the rate schedule entered into between West Penn Power Company and Allegheny Electric Cooperative, Inc.

Copies of the filing were served upon the Allegheny Electric Cooperative, Inc. and the Pennsylvania Public Utility Commission.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**22. Western Resources, Inc.**

[Docket No. ER95–592–000]

Take notice that on February 13, 1995, Western Resources, Inc. (WRI), tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 252. WRI states the purpose of the change is to provide generation deferral service to the City of St. John. The change is proposed to become effective June 1, 1995.

Copies of the filing were served upon the City of St. John and the Kansas Corporation Commission.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**23. South Carolina Electric & Gas Company**

[Docket No. ER95–593–000]

Take notice that on February 13, 1995, South Carolina Electric & Gas Company, tendered for filing proposed cancellation of Rate Schedule 28 (FPC) between South Carolina Electric & Gas Company and Duke Power Company.

Under the proposed cancellation the agreement which expired effective January 31, 1995 will be canceled.

Copies of this filing were served upon Duke Power Company.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**24. The Washington Water Power Company**

[Docket No. ER95–594–000]

Take notice that on February 13, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.13, a new signed Service Agreement under Electric Tariff No. 4.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**25. Kentucky Utilities Company**

[Docket No. ER95–595–000]

Take notice that on February 13, 1995, Kentucky Utilities Company filed a Letter of Agreement providing for power sales between itself and Wabash Valley Power Association, Inc.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**26. San Diego Gas & Electric Company**

[Docket No. ER95–596–000]

Take notice that on February 13, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing an acceptance, pursuant to 18 C.F.R. § 35.12, an Interchange Agreement (Agreement) between SDG&E and Engelhard Power Marketing, Inc. (ENGL).

SDG&E requests that the Commission allow the Agreement to become effective on the 17th of April, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and ENGL.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**27. Pennsylvania Electric Company**

[Docket No. ER95–597–000]

Take notice that on February 13, 1995, GPU Service Corporation (GPUSC), on behalf of Pennsylvania Electric Company (Penelec), filed an Hourly Energy Transmission Service Agreement between GPUSC and New York State Electric & Gas Company (Agreement).

Under the Agreement, Penelec will provide Hourly Energy Transmission Service consisting of non-firm transmission service for an amount of electric energy not to exceed 200 megawatt hours per hour over its transmission facilities between the Homer City Generating Station located in Center Township, Indiana County, Pennsylvania and Baltimore Gas and Electric Company's use entitlement in the Keystone substation. GPUSC, a service company subsidiary of General Public Utilities Corporation and an affiliate of Penelec, will serve as agent for the Penelec with respect to the administration of the Agreement.

GPUSC requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 14, 1995.

GPUSC has served copies of the filing on the Pennsylvania Public Utility Commission and New York State Electric & Gas Company.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**28. Allegheny Power Service Corporation on Behalf of West Penn Power Company**

[Docket No. ER95–598–000]

Take notice that on February 14, 1995, Allegheny Power Service Corporation on behalf of West Penn Power Company submitted Supplement No. 3 to the above-referenced docket to add a new delivery point for borderline service with Pennsylvania Power & Light Company.

A copy of the filing has ′been provided to the Pennsylvania Public Utility Commission and all parties of record.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**29. Southern Indiana Gas and Electric Company**

[Docket No. ER95–599–000]

Take notice that on February 14, 1995, Southern Indiana Gas and Electric Company (Southern Indiana), tendered for filing Amendments to Coordination Rates in Interconnection Agreements to Reflect the Costs of Emissions Allowances for the following FERC Rate Schedules: No. 21, Agreement with Public Service Indiana, Inc. (CINERGY); No. 24, Agreement with Louisville Gas and Electric Company (LG&E); No. 25, Agreement with Indianapolis Power and Light Co., Inc.; No. 27, Agreement with Public Service Company of Indiana, Inc. (CINERGY) and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); No. 33, Agreement with Big Rivers Electric Corporation (Big Rivers); No. 44, Agreement with Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); No. 1, Agreement with Ohio Valley Electric Corporation (OVEC), and pending FERC Cause No. ER95–283–000, with Wabash Valley Power Association (WVPA). A copy of the filing has been sent to each of the above companies.

The proposed Amendment in each Rate Schedule is being made by an abbreviated filing under FPA § 205 and pursuant to the Commission's Interim Rate issued in Docket No. PL95–1–000, Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates and provides for cost recovery of $SO_2$ emissions allowances in energy sales. These amendments are limited to coordination sales tariffs contained in the Agreements.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of January 1, 1995, and Southern Indiana agrees to the refund conditions for allowance related charges assessed between January 1, 1995, and the date the Commission issues an order accepting the filing.

*Comment date:* March 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**30. Selkirk Cogen Partners, L.P.**

[Docket No. QF89–274–012]

On February 17, 1995, Selkirk Cogen Partners, L.P. (Applicant), of Creble Road, County Route 55, Selkirk, New York 12158, submitted for filing an application for recertification 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 Applicant, the topping-cycle cogeneration facility is located in Selkirk, New York. The Commission previously certified the facility as a qualifying cogeneration facility in *JMC Selkirk, Inc.*, 48 FERC ¶ 62,228 (1989) and recertified the facility in *Selkirk Cogen Partners, L.P.*, 51 FERC ¶ 61,264 (1990) and 59 FERC ¶ 62,254 (1992). Notices of self-recertification were filed on June 18, 1990, October 16, 1992, March 10, 1993, June 16, 1993, May 2, 1994, and August 25, 1994. The Commission most recently recertified the facility in *Selkirk Cogen Partners, L.P.*, 70 FERC ¶ 62,084 (1995). The instant request for recertification is due to a change in ownership of the facility.

*Comment date:* April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 95–5395 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. PR95–5–000]**

## Cranberry Pipeline Corporation; Notice of Petition for Rate Approval

February 28, 1995.

Take notice that on February 24, 1995, Cranberry Pipeline Corporation (Cranberry), filed pursuant to § 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable maximum rate of $0.8839 per MMBtu for transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) on its West Virginia system. Cranberry also requests Commission approval of a maximum Hub Rate of $0.0645 per MMBtu for transportation on its West Virginia system between certain interstate pipelines.

Cranberry states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates intrastate pipeline systems in the States of West Virginia and Pennsylvania. Cranberry proposes an effective date of February 24, 1995.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 15, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–5327 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP92–182–009]**

## Florida Gas Transmission Company; Notice of Compliance Filing

February 28, 1995.

Take notice that on February 15, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 8A.01
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet No. 102B
Substitute First Revised Sheet No. 113
Substitute Second Revised Sheet No. 168
Substitute First Revised Sheet No. 171
Substitute Second Revised Sheet No. 172
Substitute Second Revised Sheet No. 173
Substitute Second Revised Sheet No. 176

By orders issued January 15, 1993, April 21, 1993, September 15, 1993 and February 2, 1994, the Commission approved the Stipulation and Agreement filed August 25, 1992 (Settlement) in Docket Nos. CP92–183, *et al.* and authorized FGT to construct and operate a major expansion of its system (Phase III Expansion). These

orders also authorized FGT to provide firm transportation rate schedule, FTS–2. The initial orders in the Phase III proceedings were issued prior to final resolution of the issues in FGT's restructuring proceeding in Docket No. RS92–16–000. Ordering Paragraph H of the January 15 order provided that ''(p)roposed Rate Schedule FTS–2 must comply with any general modifications made by the commission'' in FGT's restructuring proceeding. Ordering Paragraph C of the September 15 order required that ''Florida Gas shall submit for filing, not less than thirty days and not more than 60 days prior to the proposed effective date or commencement of operations authorized herein, revised tariff sheets in accordance with the Commission's January 15 and April 21 orders and this order.'' On October 28, 1994, FGT filed revised tariff sheets to implement the new FTS–2 transportation service in compliance with the settlement and the above-referenced orders (October 28 Filing).

On January 31, 1994, the Commission issued its Order Accepting Tariff Sheets, Subject to Conditions, Accepting and Suspending Other Tariff Sheets, Subject to Conditions, and Rejecting Tariff Sheets (January 31 order). The January 31 order addressed FGT's October 28 filing, as well as FGT's general Section 4 rates case filed on December 30, 1994 (Section 4 filing). The January 31 order accepted, subject to conditions, those portions of the October 28 filing which the Commission determined to be directly related to the implementation of FGT's Phase III service to be effective March 1, 1995, or upon the in-service date of the Phase III Expansion, whichever was later. The remaining portions of the October 28 filing were rejected without prejudice to their inclusion in the Section 4 filing and a merits determination in the review of that filing. FGT states that the instant filing is submitted to comply with the January 31 order as it relates to the October 28 filing. FGT states that compliance with that portion of the January 31 order addressing the Section 4 filing will be filed under separate cover letter.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 7, 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. 95–5328 Filed 3–3–95; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. RP95–173–000]**

## Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1995.

Take notice that on February 23, 1995, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1995:

Second Revised Sheet No. 1
First Revised Sheet No. 2
Fifth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fourth Revised Sheet No. 23
Fifth Revised Sheet No. 24
First Revised Sheet No. 28
Second Revised Sheet No. 402
Second Revised Sheet No. 403
Third Revised Sheet No. 502
First Revised Sheet No. 600
First Revised Sheet No. 801
First Revised Sheet No. 803
First Revised Sheet No. 806
Third Revised Sheet No. 1104
First Revised Sheet No. 1300
Second Revised Sheet No. 1305
First Revised Sheet No. 1400
First Revised Sheet No. 1403
First Revised Sheet No. 1404
Original Sheet No. 1404A
Second Revised Sheet No. 1409
First Revised Sheet No. 1411
First Revised Sheet No. 1412
Second Revised Sheet No. 1501
Second Revised Sheet No. 1702
Second Revised Sheet No. 1703
Second Revised Sheet No. 1708
First Revised Sheet No. 1710
Second Revised Sheet No. 1801
Second Revised Sheet No. 1802
Second Revised Sheet No. 1803
Second Revised Sheet No. 1804
First Revised Sheet No. 1900
First Revised Sheet No. 1901
First Revised Sheet No. 1905
Third Revised Sheet No. 2700
Third Revised Sheet No. 2701
Third Revised Sheet No. 2702
Third Revised Sheet No. 2703
Third Revised Sheet No. 2704
Third Revised Sheet No. 2705
Third Revised Sheet No. 2706
Second Revised Sheet No. 2800
First Revised Sheet No. 2801
Original Sheet No. 2802
First Revised Sheet No. 3606
First Revised Sheet No. 3703
First Revised Sheet No. 4102
First Revised Sheet No. 4202
First Revised Sheet No. 4302
Second Revised Sheet No. 4401
First Revised Sheet No. 4402
First Revised Sheet No. 4600
First Revised Sheet No. 4702
Second Revised Sheet No. 4900
Second Revised Sheet No. 5000
Second Revised Sheet No. 5200

KGPC states that as a result of one year of experience under Order No. 636 and subsequent Commission orders modifying certain requirements and responsibilities of interstate natural gas pipelines, KGPC is revising its Tariff to clarify current practices, and to institute modifications to improve the administration of its system in the new operational environment. Specifically, KGPC submits the above referenced tariff sheets to provide for fuel discounts, to amend the Firm Storage Service (FSS) and Interruptible Storage Service (ISS) rate schedules to modify the treatment of gas remaining in storage at the expiration of the contract and to clarify excess withdrawal capability, to update certain provisions to conform to current practices regarding sales service, nominations, imbalance resolution, supplemental points, recording of telephone conversations, and Predetermined Allocation Agreements. Additionally, KGPC submits other sheets to update its tariff pursuant to Commission Order No. 563 *et seq.* and Order No. 636 *et seq.*, and to correct miscellaneous errors and cross references, as explained in the application which is on file with the Commission.

KGPC also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before March 7, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. 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. 95–5324 Filed 3–3–95; 8:45 am]

**BILLING CODE 6717–01–M**

**[Docket No. RP95–172–000]**

## Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1995.

Take notice that on February 23, 1995, Natural Gas Pipeline Company of America (Natural), tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 246, with a proposed effective date of March 25, 1995.

Natural states that the purpose of the filing is to modify the first-of-the-month deadline of its Tariff to permit nominations up until 11:59 p.m. of the fourth business day preceding the first day of the month.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheet to become effective March 25, 1995.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 385.211 or 315.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 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. 95–5325 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP95–171–000]**

## Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 28, 1995.

Take notice that on February 23, 1995, Stingray Pipeline Company (Stringray), tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 119, with a proposed effective date of March 25, 1995.

Stingray states that the purpose of the filing is to modify the first-of-the-month deadline of its Tariff to permit nominations up until 11:59 p.m. of the second business day preceding the first day of the month.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheet to become effective March 25, 1995.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 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. 95–5326 Filed 3–3–95; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5164–8]**

## Economic Incentive and Regulatory Innovation Subcommittee of the Clean Air Act Advisory Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Protection Agency is convening a series of open meetings of the Economic Incentive and Regulatory Innovation Subcommittee of the Clean Air Act Advisory Committee. These meetings will concern the development of generic language for a rule on open market emissions trading. The meetings are open to the public. Seating is available on a first-come, first-served basis.

**DATES:** The Subcommittee will meet on the following dates and times at the following locations:

March 16, 1995, 9 a.m. to 5 p.m. EST, Location A

March 30, 1995, 9 a.m. to 1 p.m. EST, Location B

April 13, 1995, 9 a.m. to 5 p.m. EST, Location A

April 25, 1995, 9 a.m. to 1 p.m. EST, Location B

**ADDRESSES:** Location A is the Channel Inn (the State Room), 650 Water Street, S.W., Washington, D.C. 20024 (202–554–2400). Location B is Conference Room #3 North, Washington Information Center, EPA Headquarters, 401 M Street, S.W., Washington, D.C. 20460 (202–260–2046).

**FOR FURTHER INFORMATION:** Carey Fitzmaurice, U.S. EPA–OAR, (202) 260–7433, or Scott Mathias, US EPA–OAQPS, (919) 541–5310.

**SUPPLEMENTARY INFORMATION:** Agenda and other materials for these meeting will be mailed to Committee members prior to the meetings, and are available to others upon request.

Dated: February 28, 1995.

**Richard Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 95–5404 Filed 3–3–95; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL RESERVE SYSTEM

## Agency Forms Under Review

### Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following report(s):

*1. Report title:* Annual Report of Bank Holding Companies.

*Agency form number:* FR Y-6.

*OMB Docket number:* 7100-0124.

*Frequency:* Annual.

*Reporters:* Bank Holding Companies.

*Annual reporting hours:* 21,972.

*Estimated average hours per response:* Range from 1.3 to 101 hours per response.

*Number of respondents:* 5,493.

Small businesses are affected.

*General description of report:* This information collection is mandatory to obtain or retain a benefit [12 U.S.C. 1844(b) and (c)] and 12 CFR 225.5 of Regulation Y. Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

*Abstract:* The FR Y-6 is an annual report filed by the top-tier bank holding companies. Foreign banking organizations as defined by section 211.23(b) of Regulation K are not required to file this form. The FR Y-6 consists of consolidated and parent company financial statements in the company's own format.

The FR Y-6 report is the Federal Reserve's principal source of internally generated and independently audited financial data on individual bank holding companies and their banking and nonbanking subsidiaries. The report enables the Federal Reserve to monitor bank holding company operations and to ensure that the operations are conducted in a safe and sound manner and in compliance with the provisions of the Bank Holding Company Act and Regulation Y.

The Federal Reserve approved the following revisions to the FR Y-6:

(1) Eliminate the requirement to submit consolidated and parent company financial statements.

(2) Revise the requirement for audited financial statements to include only holding companies with assets of $500 million or more.

(3) Eliminate the requirement to submit nonbank subsidiary financial statements. This information is currently proposed to be incorporated into an expanded standardized FR Y-11 report (Financial Statement of Nonbank Subsidiaries of Bank Holding Companies).

(4) Eliminate the requirement to submit certified copies of amendments to organizational documents.

(5) Eliminate the collection of information on insider loans.

(6) Eliminate the confirmation of changes in investments and activities.

Board of Governors of the Federal Reserve System, February 28, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95-5368 Filed 3-3-95; 8:45AM]

**Billing Code 6210-01-F**

## Agency Forms Under Review

**Background:**

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

**DATES:** Comments are welcome and should be submitted on or before March 20, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829); for the hearing impaired only, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Request for OMB approval to revise the following report:

*1. Report title:* Consolidated Reports of Condition and Income (Call Report).

*Agency form number:* FFIEC 031-034.

*OMB Docket number:* 7100-0036.

*Frequency:* Quarterly.

*Reporters:* State member banks.

*Annual reporting hours:* 169,592.

*Estimated average hours per response:* 43.0.

*Number of respondents:* 986.

Small businesses are affected.

*General description of report:* This information collection is mandatory to obtain or retain a benefit (12 U.S.C. 324) and is given partial confidential treatment.

**SUMMARY:** The proposed revisions to the Call Report that have been submitted to the Office of Management and Budget for approval are mandated by the Federal Financial Institutions Examination Council (FFIEC).

On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the proposed changes would apply to all four sets of reporting forms (FFIEC 031, FFIEC 032, FFIEC 033, and FFIEC 034; the proposed changes are as follows:

**DELETIONS AND REDUCTIONS IN DETAIL**

The level of detail with which restructured loans and leases that are in compliance with modified terms are reported in the memoranda section of Schedule RC-C, ''Loans and Lease Financing Receivables,'' would be reduced. For all banks, the current separate items for the various non-real-estate loan categories will be combined into a single item for ''All other loans and all lease financing receivables.'' In addition, banks with foreign offices or with $300 million or more in total assets that file the FFIEC 031 and 032 report forms also will report a single total for their restructured commercial loans to and their restructured leases of non-U.S. addressees.

**CALL REPORT ITEMS IN THE SEVEN FOLLOWING AREAS WOULD BE DELETED:**

(1) Schedule RC-R, item 3, ''Total qualifying capital allowable under the risk-based capital guidelines.''

(2) The quarterly average of ''Obligations (other than securities and leases) of states and political subdivisions in the U.S.'' in Schedule RC-K, item 6.a(6) on the FFIEC 031, item 6.f on the FFIEC 032, and Memorandum item 1 on the FFIEC 033. This average has not been collected from banks with less than $100 million in assets that file the FFIEC 034 report form.

(3) The four components of mandatory convertible debt, net of dedicated stock, in Schedule RC-M, items 7.a through 7.d on the FFIEC 031 and 032, items 6.a through 6.d on the FFIEC 033, and items 8.a through 8.d on the FFIEC 034. The item for the total amount of mandatory convertible debt, net of dedicated stock, would be retained.

(4) The year-to-date reconcilement of the allocated transfer risk reserve in Schedule RI-B, Part II. This reconcilement has been collected only from banks with foreign offices or with total assets of $300 million or more that file the FFIEC 031 or 032 report forms.

(5) The quarterly reconcilement of the agricultural loan loss deferral account in Schedule RC-M, items 10.a through 10.e. This reconcilement has been

collected only from banks with total assets of less than $100 million that file the FFIEC 034 report.

(6) Recoveries of ''Special-Category Loans'' in Schedule RI-B, Part 1, Memorandum item 1 on the FFIEC 031 and 032, Memorandum item 3 on the FFIEC 033, and Memorandum item 2 on the FFIEC 034. This item has been collected from national banks only.

(7) The yes-no question on ''Personnel changes among the three senior officers of the bank during the quarter'' in Schedule RC-M, item 6 on the FFIEC 034. This item has been completed only by banks with total assets of less than $100 million that file the FFIEC 034 report form.

**NEW ITEMS**

Call Report items in the eight following areas would be added:

(1) Notional Amounts/Par Values

At present, all banks report notional amount/par value data for interest rate, foreign exchange rate, and other commodity and equity contracts in items 11 through 13 of Schedule RC-L, ''Off-Balance Sheet Items.'' The existing items will be expanded to separate exchange-traded contracts from over-the-counter contracts and to separate equity derivative contracts from commodity and other contracts. (Spot foreign exchange contracts would also be reported separately.) In addition, for each of the four types of underlying risk exposures (i.e., interest rate, foreign exchange, equity, and commodity, and other), the total notional amount/par value of contracts held for trading and held for purposes other than trading will be reported separately, with the latter further divided between contracts that are marked to market for Call Report purposes and those that are not.

(2) Gross Fair Values

For banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 reporting forms, Schedule RC-L will also be expanded to include gross fair value data for derivatives. (This information will not be collected from small banks that file the FFIEC 034 report forms.) For each of the four types of underlying risk exposures, the gross positive and gross negative fair values will be reported separately for

(i) Contracts held for trading purposes,

(ii) Contracts held for purposes other than trading that are marked to market, and

(iii) Contracts held for purposes other than trading that are not marked to market. When reporting gross fair values, no netting of contracts would be permitted.

(3) Income-Related Information

Additional memorandum items to Schedule RI, ''Income Statement'' will be reported by banks with foreign offices or with $100 million or more in total assets that file the FFIEC 031, 032, or 033 reporting forms. First, banks will provide a breakdown of trading revenue that has been included in the body of the Schedule RI income statement. For each of the four types of underlying risk exposures, banks will report the combined revenue from trading cash and derivative instruments. Second, for derivatives held for purposes other than trading, banks will report the effect that these contracts had on the bank's income as reported in Schedule RI. There will be separate disclosure of

(i) The net increase (decrease) to interest income,

(ii) The net increase (decrease) to interest expense, and

(iii) The effect on noninterest income and expense of these off-balance-sheet derivative contracts.

(4) Risk-Based Capital Reporting Changes

For those banks that complete Schedule RC-R in its entirety, the schedule's memorandum section will be revised to provide for the collection of remaining maturity data for long-dated contracts and for four additional types of derivative contracts: gold contracts, other precious metals contracts, other commodity contracts, and equity contracts. The two replacement cost items currently collected for interest rate and foreign exchange rate contracts will be deleted and replaced with a single new item for a bank's current credit exposure across all derivative contracts and counterparties, taking into account legally enforceable, bilateral netting agreements that are recognized for risk-based capital.

(5) Investments in ''High-Risk Mortgage Securities'' and Structured Notes''

Four memorandum items would be added to Schedule RC-B, ''Securities,'' in which banks will separately report the amortized cost and fair value of any ''high-risk mortgage securities'' and of any ''structured notes'' that are held in either the held-to-maturity or available-for-sale portfolios.

(6) Sales of Proprietary Mutual Funds and Annuities

Currently banks are required to report separately the dollar amount of sales during the quarter for money market funds, equity securities funds, debt securities funds, other mutual funds, and annuities in Schedule RC-M, ''Memoranda.'' The five existing mutual fund and annuity items combine sales of proprietary, private label, and third party products. The banking agencies would add one item to Schedule RC-M in which banks will report separately the total sales during the quarter of proprietary mutual funds and annuities.

(7) Reporting of Reciprocal Demand Balances for Insurance Assessment Purposes

The banking agencies would add three items to Schedule RC-O, ''Other Data for Deposit Insurance Assessments,'' in order to identify the amount of the these adjustments to a bank's reported demand deposits that are needed for deposit insurance assessment purposes:

(i) Amount by which demand deposits would be reduced if reciprocal demand balances between the reporting bank and savings associations were reported on a net basis rather than a gross basis in Schedule RC-E,

(ii) Amount by which demand deposits would be increased if reciprocal demand balances between the reporting bank and U.S. branches and agencies of foreign banks were reported on a gross basis rather than a net basis in Schedule RC-E, and

(iii) Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of net reciprocal demand balances between the reporting bank and U.S. banks and savings associations in Schedule RC-E.

(8) Disclosure of the Acquisition Date When Push Down Accounting Has Been Applied

Push down accounting is the establishment of a new accounting basis for a bank in its separate financial statements (including its Call Report) as a result of a substantive change in control. The banking agencies would add an item to the Memoranda section of Schedule RI, ''Income Statement,'' to reveal the date when any such transactions have taken place.

**INSTRUCTIONAL CHANGES**

The Call Report instructions will be updated in certain places to incorporate references to FASB Statement No. 114, ''Accounting by Creditors for Impairment of a Loan.'' Statement No. 114 defines impairment and sets forth measurement methods for estimating the portion of the total allowance for loan and lease losses attributable to impaired loans. The banking agencies also propose instructional changes relating to the reporting of mortgage-backed securities in the body of Schedule RC-B, ''Securities,'' so that item 4 of Schedule RC-B will include all mortgage-backed securities. In addition, the Call Report instructions will be clarified in response to questions about the reporting of lines of credit extended to bank insiders, participations in pools

of residential mortgages, refundable loan commitment fees, and stock subscription payments.

The effective date for these proposed changes, if approved, would be the March 31, 1995, report date.

Board of Governors of the Federal Reserve System, February 28, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95-5359 Filed 3-3-95; 8:45AM]

**Billing Code 6210-01-F**

## Agency Forms Under Review

**Background:**

Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

**DATES:** Comments are welcome and should be submitted on or before March 20, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829); for the hearing impaired *only*, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Request for OMB approval to revise the following report:

*1. Report title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

*Agency form number:* FFIEC 002.

*OMB Docket number:* 7100-0032.

*Frequency:* Quarterly.

*Reporters:* U.S. branches and agencies of foreign banks.

*Annual reporting hours:* 49,350.

*Estimated average hours per response:* 22.15.

*Number of respondents:* 557.

Small businesses are affected.

*General description of report:* This information collection is mandatory to obtain or retain a benefit (12 U.S.C. 3105(b)(2)), 1817(a)(1) and (3), and 3102(b) and is given confidential treatment (5 U.S.C. 552(b)(8).

**SUMMARY:** The proposed revisions to the FFIEC 002 that have been submitted to the Office of Management and Budget for approval are mandated by the Federal Financial Institutions Examination Council (FFIEC).

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies. The proposed changes affect several existing schedules.

The following revisions are proposed for implementation as of March 31, 1995.

(1) On Schedule RAL, ''Assets and Liabilities,'' item 1.c for ''Other bonds, notes, debentures, and corporate stock (including U.S. state and local securities) would be divided into ''Securities of freign governmental units'' and ''All other.''

(2) On Schedule RAL, ''Assets and Liabilities'', a new item would be added for ''Trading Liabilities'' to disclose further information on trading activities (open short positions and revaluation losses on derivatives).

(3) On Schedule RAL, ''Memoranda,'' five items would be added in which branches and agencies would separately report the amortized cost and fair value of any ''high-risk mortgage securities'' and of any ''structured notes'' that are held in either the held-to-maturity or available-for-sale portfolios, and total sales of mutual funds and annuities.

(4) On Schedule M, ''Due from/Due to Related Institutions in the U.S. and in Foreign Countries,'' a memorandum item would be added for revaluation gains and revaluation losses from the marking-to-market of off-balance-sheet derivatives contracts with related parties that are held for trading purposes.

(5) The banking agencies would add three items to Schedule O, ''Other Data for Deposit Insurance Assessments,'' in order to identify the amount of the these adjustments to reported demand deposits of a branch or agency for deposit insurance assessment purposes:

(i) Amount by which demand deposits would be reduced if reciprocal demand balances between the reporting branch or agency and savings associations were reported on a net basis rather than a gross basis in Schedule E,

(ii) Amount by which demand deposits would be increased if reciprocal demand balances between the reporting branch or agency and U.S. banks were reported on a gross basis rather than a net basis in Schedule E, and

(iii) Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of net reciprocal demand balances between the reporting branch or agency and U.S. banks savings associations in Schedule E.

The following revisions are proposed for implementation as of June 30, 1995.

(1) Notional Amounts/Par Values

At present, all branches and agencies report notional amount/par value data for interest rate, foreign exchange rate, and other commodity and equity contracts in items 2,3,4, and 9 of Schedule L, ''Commitments and Contingencies,'' for transactions with non-related depository institutions, and in items 2,3,4, and 9 of Schedule M, Part V, ''Commitments and Contingencies,'' for transactions with related depository institutions. The existing items would be expanded to separate exchange-traded contracts from over-the-counter contracts and to separate equity derivative contracts from commodity and other contracts. (Spot foreign exchange contracts would also be reported separately.) In addition, for each of the four types of underlying risk exposures (i.e., interest rate, foreign exchange, equity, and commodity and other), the total notional amount/par value of contracts held for trading and held for purposes other than trading will be reported separately, with the latter further divided between contracts that are marked to market for FFIEC 002 reporting purposes and those that are not.

(2) Gross Fair Values of Derivative Contracts

For branches and agencies with $100 million or more in total assets that file the FFIEC 002 reporting forms, Schedule L and Schedule M, Part V, would also be expanded to include gross fair value data for derivatives. For each of the four types of underlying risk exposures, the gross positive and gross negative fair values will be reported separately for

(i) Contracts held for trading purposes,

(ii) Contracts held for purposes other than trading that are marked to market, and

(iii) Contracts held for purposes other than trading that are not marked to market. When reporting gross fair values, no netting of contracts would be permitted.

Board of Governors of the Federal Reserve System, February 28, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95-5369 Filed 3-3-95; 8:45AM]

**Billing Code 6210-01-F**

## Bank of Colorado Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 30, 1995.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Bank of Colorado Holding Company*, Vail, Colorado; to merge with Snow Bankcorp, Inc., Dillon, Colorado, and thereby indirectly acquire Snow Bank, N.A., Dillon, Colorado.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. FirstBank Group, Inc.*, Los Fresnos, Texas; to merge with Raymondville State Bancshares, Inc., Raymondville, Texas, and thereby indirectly acquire First Valley Bank, Raymondville, Texas.

In connection with this application FirstBank Group, Inc., Los Fresnos, Texas; also has applied to acquire 100 percent of the voting shares of First Valley Delaware Financial Corporation, Dover, Delaware, and First Valley Bank, Raymondville, Texas.

Board of Governors of the Federal Reserve System, February 28, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-5363 Filed 3-3-95; 8:45 am]

**BILLING CODE 6210-01-F**

## Executive Auto Lease, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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 March 20, 1995.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. Executive Auto Lease, Inc.*, Andover, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Fidelity Bank and Trust Company, Salem, New Hampshire, a *de novo* bank, whose name will be changed to Southern New Hampshire Bank & Trust Company, Salem, New Hampshire.

In connection with this application, Applicant also has applied to engage directly in leasing real or personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 28, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–5361 Filed 3–3–95; 8:45 am]

**BILLING CODE 6210–01–F**

## Sidell Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to

produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Sidell Bancorp, Inc.*, Sidell, Illinois; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 28, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–5362 Filed 3–3–95; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families and the Public Health Service

**[Program Announcement No. OCS 95–12]**

### Family Violence Prevention and Services Program

**AGENCY:** Office of Community Services, Administration for Children and Families; Centers for Disease Control and Prevention, Public Health Service; and the Substance Abuse and Mental Health Services Administration, Public Health Service; in the Department of Health and Human Services (HHS).

**ACTION:** Notice of the availability of financial assistance and request for applications to establish a National Domestic Violence Hotline.

**SUMMARY:** The Office of Community Services, Administration for Children and Families, in cooperation with the Centers for Disease Control and Prevention and Substance Abuse and Mental Health Services Administration, announces the availability of funds in fiscal year 1995 for the award of one cooperative agreement on a competitive basis to operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. This announcement contains all of the application materials needed to apply for this cooperative agreement.

The purpose of the national domestic violence hotline is to provide information and referral services, counseling, and assistance to victims of domestic violence, their children and other family members, and others affected by such violence and to enable them to find safety and protection in crisis situations. The successful applicant will be required to provide telephonic assistance on a 24 hour-per-day, seven day-a-week basis throughout the continental United States, and in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

**DATES:** The closing date for submission of applications is June 5, 1995.

**ADDRESSES:** Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families/Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, (OCS 95–12) Washington, DC. 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at:

Administration for Children and Families, Division of Discretionary Grants, 901 D Street, SW., 6th Floor (OCS 95–12), OFM/DDG, Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** William D. Riley, Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, S.W., Washington, DC. 20447. Telephone (202) 401–5529.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of four parts. Part I provides information on the legislative authority applicable to this announcement and background information on the proposed national domestic violence hotline. Part II describes the minimum requirements for the design of the hotline that the applicant must address in its application. Part III describes the evaluation criteria. Part IV provides information and instructions for the development and submission of an application.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that the cooperative agreement to be awarded under this program announcement is subject to the availability of funds.

### Part I: General Information

*A. Legislative Authority*

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, et seq.) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was reauthorized and amended for fiscal years 1996 through 2000 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill), signed into law on September 13, 1994.

One part of the Crime Bill, the Violence Against Women Act, added section 316 to the Family Violence Prevention and Services Act to authorize a grant award for up to five years to provide for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

*B. Conceptual Framework and Scope of Services*

The prevalence of family violence is widespread and its effective prevention and treatment requires coordination and collaboration among a broad range of legal, justice system, health, and social service providers, and advocates at the Federal, State and local levels.

To serve the wide range of expected calls effectively, the hotline must have expertise about domestic violence and services to victims of domestic violence. The staff also must understand the importance of using appropriate linkages with State and local resources to serve callers to the hotline. The benefits of a highly visible national hotline to victims and others will be directly related to the productive working relationships and coordinated provision of services between and among the hotline and State and local hotlines and other services and resources.

Calls to the hotline may range from the urgent and life-threatening to calls for general reference information. The target population to be served by the hotline is specified in the statute as ''victims of domestic violence.'' The hotline should be prepared to respond to the broad range of violence that

occurs in the context of family and intimate relationships, domestic violence, spouse abuse, partner abuse, battering of women, sexual assault, date rape, and acquaintance rape. The hotline also will serve those less directly affected by such abuse, e.g., relatives, children of victims and other family members, friends, neighbors, perpetrators and batterers, other concerned individuals, and the general public.

In terms of the scope of the services provided by the hotline, the statute requires the provision of ''information and assistance'' and ''counseling and referral services.'' Therefore, the applicants' proposed design and plan for operating the hotline and responding to callers is important. However, the hotline is not expected to provide extended or long-term counseling or therapy services. The fuller discussion of a problem and consideration of options is done most appropriately at the local level, given the variation in laws and services available among the States and localities.

Finally, because domestic violence often contributes to isolation, helplessness, loss of self-esteem, and dependence, a self-help and empowerment model of services is needed. Such a model:

- Protects and assures safety for all victims and other family members;
- Builds on the strengths and resources of individuals and families;
- Offers options and support for independent decision-making based on specific individual and family needs and circumstances; and
- Assists individuals and families to obtain protection and needed services that are respectful of cultural and community characteristics.

Finally, we recognize that there is an inter-relationship between alcohol, drug abuse, and mental health (ADM) problems and domestic violence. Alcohol abuse has been demonstrated to contribute to violent behavior. Moreover, the abuse of alcohol coupled with other drugs is even more likely to be associated with severe battering incidents than is alcohol by itself. Victims of and or witnesses to domestic violence also may experience psychological consequences or turn to substance to ameliorate their pain. In addition to physical trauma resulting from acts of physical abuse, battered women suffer from a number of mental health consequences, including higher levels of depression, drug and alcohol abuse, suicide attempts, and low self-esteem. Many of the mental health consequences of spousal violence result from chronic intimidation and fear, which are often as significant as the actual, acts of physical aggression. Witnessing spousal violence contributes to the cycle of violence outside the home. There is an increased likelihood of child abuse in homes where there has already been spouse abuse.

*C. Eligible Applicants*

Any private nonprofit agency, organization, institution, Tribal organization, or combination thereof, is eligible to apply for these funds. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

*D. Availability of Funds*

As authorized by section 316 of the Act, the Office of Community Services will award one cooperative agreement in FY 1995 of a maximum of $1 million for the implementation of the toll-free rational domestic violence hotline. The source of these funds will be the Crime Bill Trust Fund.

Non-competitive continuation grant awards for each of years two through five (FYs 1996–1999) will be a maximum of $850,000, subject to the availability of funds. This total represents $400,000 from the Crime Bill Trust Fund for the operation of the hotline and $450,000 to be used to carry out additional statutory and programmatic activities on behalf of the Centers for Disease Control and Prevention (CDC), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the Office of Community Services (OCS).

Because the national hotline is viewed as a viable mechanism to achieve a number of specific aims, in each of years two through five CDC plans to provide $250,000 under section 393 of the Public Health Services Act to provide additional support for State and local domestic violence hotlines in response to the demand generated by the national public awareness campaign; SAMHSA plans to provide $100,000 under appropriate FY 1996 statutory authorities to enhance the hotline database to include ADM resources, support the training of hotline staff to assure that they are knowledgeable about ADM involvement in incidents of domestic violence and can make appropriate referrals to ADM services, and, to the extent possible, collect such information from callers; and OCS plans to provide $100,000 under section 305 of the Family Violence Prevention and Services Act to support additional compilation and reporting of information based on calls to the hotline. These supplemental activities are described in greater detail as grantee requirements in Part II of this announcement.

Section 316 of the Act also states that funds appropriated and awarded from the Crime Trust Fund will remain available until expended, i.e., the $1 million in FY 1995 and $400,000 in FYs 1996–1999. This provides additional flexibility to the grantee in the timing and use of these funds. The funds for additional purposes in FYs 1996–1999 ($450,000 in each of years two through five) must be expended by the end of the fiscal year following receipt of the funds.

*E. Duration of Project*

The Office of Community Services, in cooperation with CDC and SAMHSA, will award one grant, as a cooperative agreement, for up to five years (60-month project period). The initial grant award, to be made on a competitive basis, will cover a 12-month budget period. Application for continuation funding beyond the initial 12-month budget period, but within the 60-month project period, will be considered in subsequent years on a non-competitive basis, subject to the approval of the Secretary, the availability of funds, the satisfactory performance of the grantee, and the determination that the continued funding and support of the project would be in the best interest of the government.

*F. Cooperative Agreement*

The Office of Community Services intends to support the national toll-free hotline through a cooperative agreement. A cooperative agreement is Federal financial aid in which substantial Federal involvement is anticipated. The responsibilities of the Administration for Children and Families and of the successful applicant will be identified and incorporated into the cooperative agreement during pre-award negotiations. It is anticipated that ACF responsibilities will not change the project requirements found in Part II of this announcement.

The grantee will outline a plan of interaction with OCS for implementation under a cooperative

agreement including, as appropriate, activities involving Federal staff. The plan under the cooperative agreement will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the hotline.

*G. Grantee Share of the Project*

The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $1,000,000 in Federal funds for the first year budget period must include a match of at least $333,333 (25 percent of total project cost). If approved for funding, the grantee will be held accountable for commitments of non-Federal resources, and failure to provide the required amounts will result in a disallowance of unmatched Federal funds.

**Part II: Project Requirements**

*Requirements for Project Implementation*

The following requirements must be met by the grantee and addressed in the application:

1. All funds received by the grantee pursuant to Section 316 of the Act must be used to establish and operate a national toll-free, telephone hotline to provide information and assistance to victims of domestic violence.

2. In establishing the hotline, the private, nonprofit entity shall—

- Contract with a carrier for the use of a toll-free telephone line;
- Employ, train, and supervise personnel to answer incoming calls and provide counseling and referral services on a 24-hour-a-day basis;
- Assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women and their children; and
- Publicize the hotline to potential users throughout the united States.

3. To be approved by the Secretary, the application must include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including description of—

- The training program for hotline personnel;
- The hiring criteria for hotline personnel;
- The methods for the creation, maintenance, and updating of a resource database;
- A plan for publicizing the availability of the hotline;
- A plan for providing service to non-English speaking callers, including hotline personnel who speak Spanish; and
- A plan for facilitating access to the hotline by persons with hearing impairments.

4. The applicant must demonstrate that it has:

- Nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as domestic violence State coalitions or recognized national domestic violence groups; and
- A commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities.

5. The applicant must demonstrate knowledge of the field, including the range of services and the resources available for domestic violence victims, their children and family members, perpetrators and batterers, and other concerned individuals, including services and resources relating to substance and mental health problems; State and Indian tribal domestic violence laws, including the availability of legal protection; and the barriers affecting access to such services, resources and protection.

6. The applicant must demonstrate experience in providing high-quality crisis intervention, information and referral, and counseling services and support to battered women, their children, other domestic violence victims, their family and friends, batterers, and the general public.

7. The applicant must demonstrate an understanding of the relationship of alcohol, drug abuse, and mental health (ADM) problems to incidents of domestic violence and the ability to make appropriate referrals to callers.

8. The applicant must demonstrate an understanding of the need for a national hotline for domestic violence victims, including a description of the function and limitation of the current network of national and State crisis hotlines, information lines, and State victims referral services.

9. The applicant must provide a plan and demonstrated ability to build, maintain, and keep current a comprehensive database of resource information, including the full range of services available in local communities, the types of legal protection and services available in different States and localities, and the capability to access information.

10. The applicant must provide a detailed description of:

- The telecommunications and computer technology that will be employed to establish and support the hotline, including all management functions, referral functions, resource database management functions, monitoring functions, and overall project administration and quality control, including periodic reporting to HHS;
- The design and operation of the telephone system that will be used to provide the service; its capacity and its limitations, including information such as the capacity to facilitate the number of incoming calls, call conferencing, automatic call referral to local providers, and service integration with computers.
- The methods that will be used to ensure that the national hotline is a confidential crisis intervention and the specific provisions that will be in place to safeguard the confidentiality of callers and ensure the proper handling of confidential or sensitive information;
- The personnel recruitment, hiring, and training program (i.e., a description of an initial and ongoing training plan for staff and volunteers should be included in this section) that will ensure the delivery of quality crisis intervention, information and referral, assistance, and counseling services to diverse populations;
- The specific emergency response and crisis protocol to be used, the ability to conference call (or ''patch'') a caller to a local domestic violence, legal services, or mental health or substance abuse program when appropriate, and the plans for minimizing such problems as crank/obscene calls and busy signals; and
- The methods the applicant will use to provide for the development, maintenance, and updating of a comprehensive resource database (distributed to the maximum extent appropriate); the technical capacity to link with other State and local databases in order to maintain an extensive and current resource locator or listing; the ability to facilitate communication among service providers to assist the

provision of services; and how the information on best practices gathered through the inventory being conducted by CDC will be used to assist victims.

11. The applicant must demonstrate an understanding of the technological requirements of such a project and include a detailed timeline to provide the following services nationally:

- 24-hour/365 days per year access;
- Direct access to English and Spanish-speaking personnel at all times and provision for services to other non-English speaking callers and the hearing impaired;
- Personnel (paid staff and volunteers) trained in crisis intervention, information and referral, and counseling skills;
- Comprehensive database of current information;
- The ability to connect callers directly to local programs or services when appropriate;
- Emergency response protocol for callers in immediate danger; and
- Appropriate confidentiality safeguards; and data collection and data management capability sufficient to support program administration, reporting, monitoring, and an ongoing quality assessment of the hotline service.

12. The applicant must provide a plan to coordinate, work with, and provide hotline services and data resource and referrals that make maximum use of existing domestic violence programs and resources, including, but not limited to, local and State-wide domestic violence hotlines, State Domestic Violence Coalitions, shelter programs, emergency services, legal services programs, national domestic violence resource centers, other existing national hotlines, and other national organizations; resources related to child abuse and youth endangerment, ADM problems, and perpetrators and batterers programs, the national domestic violence media campaign coordinated by the Family Violence Prevention Fund, and the various activities of the Centers for Disease Control under its campaign to prevent violence against women. The applicant must provide support to State and local domestic violence hotlines in response to the demand generated by the national public awareness campaign.

13. The applicant must provide a description of the quality assurance system it will use to assess regularly the quality of the services being provided by the hotline and the extent to which the goals and objectives of the service are being met. The quality assurance system also must include actions to address identified problems.

14. The applicant must provide a comprehensive plan to publicize the hotline to a wide national audience, including efforts to ensure promotion through the national media and through targeted outreach to racially and ethnically diverse communities, older individuals, and individuals with disabilities.

15. The applicant must demonstrate the ability to staff, financially support, and programmatically administer a national project of this scope.

16. The author(s) of the application must be clearly identified together with a description of his or her current relationship to the applicant organization and any future project role he or she may have if the project is funded.

17. The applicant must provide an assurance that any information collected as a part of this grant will become the property of the Federal Government.

18. The applicant must provide an assurance that it will work with the Federal Project Officer to identify the information that will be compiled based on incoming calls including compilation of information on both maternal and child victims of domestic violence and individual and situational factors characterizing violent and abusive behavior.

19. The applicant must provide an assurance that it will comply with the grant administration requirements in 45 CFR part 74.

**Part III: Evaluation Criteria**

The five criteria that follow will be used to review and evaluate how each application has addressed the requirements stated in Part II and should be used in developing the program narrative. The point values following each criterion heading indicate the maximum numerical weight that each section will be given in the review process.

*1. Need for the Project (10 Points)*

Provide a detailed discussion of the need for a national domestic violence hotline of the scope being proposed. Provide a detailed analysis of the available data related to the problem being addressed (both domestic violence in general and the specific lack of a national domestic violence hotline); the strengths and limitations of other national and local crisis intervention and victim services hotline/referral services available, and the ''state-of-the-art'' relative to the problem being addressed by the proposal.

*2. Goals and Objectives (10 Points)*

Clearly state the project goals and objectives. Objectives should be stated in concrete, measurable terms which clearly identify the population(s) to be served, the type, quality, and level of service to be provided, the timeline for the establishment and delivery of services, and other project benchmarks. The anticipated demand for hotline services during the initial start-up period and a projection of the demand on an ongoing basis should be discussed, with supporting documentation. Describe the precise location of the project.

*3. Approach (30 Points)*

Provide a sound workable plan of action (approach) which details: how the proposed work will be accomplished; how each task relates to the project's goals and activities; identifies the key staff member responsible for the specific tasks; provides a chart indicating the timetable for completing each task, the phasing in of the tasks over time, the lead staff person, and the time committed to the task; cites factors which might accelerate or decelerate the work; justifies the approach selected over other approaches; makes maximum use of existing facilities and resources and off-the-shelf technology; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social or community involvement; and provides projections of the accomplishments to be achieved and identifies the activities for which Federal technical assistance, advice, or guidance as the project is implemented is anticipated and would be acceptable.

*4. Results and Benefits Expected (20 Points)*

Identify, in specific terms, the results and benefits to be derived from the project and relate each result and benefit to a specific objective. Indicate the aggregate number of calls expected to be received and individuals to be assisted on an annual basis, e.g., the expected volume of calls in such service areas as crisis counseling, immediate referrals to shelters, or the number of referrals made in response to non-English speaking callers. Indicate the anticipated impact on and the subsequent benefit of the national hotline to victims of domestic violence and on the existing network of State and local shelters and services. Identify the kinds of data to be collected, maintained, and updated, and discuss

the criteria to be used to assure the quality of the services provided.

*5. Level of Effort (30 Points)*

Expertise, Commitment, and Support. The extent to which the applicant has nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as State Domestic Violence Coalitions or recognized national domestic violence groups; the extent of the applicant's commitment to diversity, and to the provision of service to ethnic, racial, and non-English speaking minorities, older individuals, and individuals with disabilities.

Staff Background and Organizational Experience. The adequacy of the staffing pattern for the proposed project, how the individual responsibilities are linked to project tasks, and the contributions to be made by key staff. Each collaborating or cooperative organization, individual consultant, or other key individuals who will work on the project should be listed along with a description of the nature of their effort or contribution.

Competence of Staff. The background and experience of the project director and key project staff and the history and accomplishments of the organization; the qualifications of the project team including any experience with similar projects; the variety of skills, relevant educational background, and the ability to effectively manage the project and to coordinate activities with other agencies. One or two pertinent paragraphs on each key member are preferred to vitae/resumes. However, vitae/resumes may be included.

Adequacy of Resources. The adequacy of the available resources and organizational experience with regard to the tasks of the proposed project. List the financial, physical, and other resources already committed by other public and private agencies and institutions, if any. Explain how these organizations will participate in the day to day operations of the project. Letters from these agencies and organizations identifying and discussing the specifics of their commitment and participation must be included in the application.

Budget. Relate the proposed budget to the level of effort required to obtain the project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Collaborative Efforts. The additional anticipated private sector resources that may be available to support or enhance the overall program. Discuss in detail and provide documentation for any proposed collaborative or coordinated efforts with other public and private agencies or organizations. Identify these agencies or organizations and explain how their participation will enhance the project. Letters from these agencies and organizations must be included discussing their interest and/or commitment in supporting this project, the stage of the planning and decision-making, and the expected level of resource commitment.

## Part IV: Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this publication along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information describing the proposed project under which the application is to be submitted. The project design requirements are found in Part II.

*A. Required Notification of the State Single Point of Contact*

This program is covered under Executive Order 12372, (E.O.) ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa, and Palau, have elected to participate in the E.O. process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–95–12) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included at the end of this announcement.

*B. Deadline for Submittal of Applications*

The closing date for submittal of applications under this program announcement is found at the beginning of this program announcement under **DATES**. Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, (OCS–95–12) 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, or

2. Sent on or before the deadline date and received by OCS in time to be considered during the competitive review process.

Applications must be postmarked no later than the date to be found at the beginning of the Program Announcement under **DATES**. When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

*Late applications.* Applications which do not meet the criteria under *''Deadlines''* are considered late applications. The ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines.* The ACF reserves the right to extend the deadline

for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; or if ACF determines a deadline extension to be in the best interest of the Government. However, ACF will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

*C. Instructions for Preparing the Application and Completing Application Forms*

The SF 424, SF 424A, Page 2, and the required certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424 and SF 424A, instructions for these forms are included below.

Where specific information is not required under this program, NA (not applicable) has been preprinted on the form.

*Please Prepare Your Application in Accordance With The Following Instructions:*

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

*Top of Page!* Enter designation ''HTL.''

*Item 1!* ''Type of Submission''—Preprinted on the form.

*Item 2!* ''Date Submitted'' and ''Applicant Identifier''—Date application is submitted to ACF and applicant's own internal control number, if applicable.

*Item 3:* ''Date Received By State''—State use only (if applicable).

*Item 4:* ''Date Received by Federal Agency''—Leave blank.

*Item 5:* ''Applicant Information'' ''Legal Name''—Enter the legal name of applicant organization.

''Organizational Unit''—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

''Address''—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

''Name and telephone number, including the area code, of the person to be contacted on matters involving this application ''—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

*Item 6:* ''Employer Identification Number (EIN)''—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

*Item 7:* ''Type of Applicant''—Self-explanatory.

*Item 8:* ''Type of Application''—Preprinted on the form.

*Item 9:* ''Name of Federal Agency''—Preprinted on the form.

*Item 10:* ''Catalog of Federal Domestic Assistance Number and Title''—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. The CFDA number for this program is 93.671.

*Item 11:* ''Descriptive Title of Applicant's Project''—Enter the project title. The title is generally short and is descriptive of the project.

*Item 12:* ''Areas Affected by Project''—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

*Item 13:* ''Proposed Project''—Enter the desired start date for the project and projected completion date.

*Item 14: ''Congressional District of Applicant/Project''*—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter ''00.''

*Items 15:* ''Estimated Funding Levels''—

In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 month budget period of the proposed five year project period.

*Item 15a:* Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the project description.

*Items 15b-e:* Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or ''matching funds.'' The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding and ''matching'' requirements, see Part I, Grantee Share of the Project.

*Item 15f:* Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement. If not applicable, enter N/A.

*Item 15g:* Enter the sum of items 15a-15e.

*Item 16a:* ''Is Application Subject to Review By State Executive Order 12372 Process? Yes.''—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 30, 1995.

*Item 16b:* ''Is Application Subject to Review By State Executive Order 12372 Process? No.''—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

*Item 17:* ''Is the Applicant Delinquent on any Federal Debt?''—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

*Item 18:* ''To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.''—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this

application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

*Item 18a-c:* ''Typed Name of Authorized Representative, Title, Telephone Number''—Enter the name, title and telephone number of the authorized representative of the applicant organization.

*Item 18d:* ''Signature of Authorized Representative''—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

*Item 18e:* ''Date Signed''—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) The total project period of 17 months or less; or (2) the first 12 month budget period, if the proposed project period exceeds 17 months.

*Section A—Budget Summary.* This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

*Section B—Budget Categories.* This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) The total project period of 17 months or less or (2) the first 12 month budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

*Personnel—Line 6a.* Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, ''Other.''

*Justification:* Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

*Fringe Benefits—Line 6b.* Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Travel—Line 6c.* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, ''Other.''

*Justification:* Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Equipment—Line 6d.* Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, ''equipment'' is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $5,000 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

*Justification:* Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

*Supplies—Line 6e.* Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

*Justification:* Specify general categories of supplies and their costs.

*Contractual—Line 6f:* Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

*Justification:* Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

*Construction—Line 6g:* Not applicable. New construction is not allowable.

*Other—Line 6h:* Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as ''miscellaneous'' and ''honoraria'' are not allowable.

*Justification:* Specify the costs included.

*Total Direct Charges—Line 6i:* Enter the total of Lines 6a through 6h.

*Indirect Charges—6j:* Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter ''none.'' Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

*Justification:* Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

*Total—Line 6k:* Enter the total amounts of lines 6i and 6j.

*Program Income—Line 7:* Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

*Justification:* Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

*Section C—Non-Federal Resources.* This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled ''Totals.'' ''In-kind contributions'' are defined in title 45 of the Code of Federal Regulations, Part 74.2, as ''the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real, property, equipment, supplies and other expandable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

*Justification:* Describe third party in-kind contributions, if included.

*Section D—Forecasted Cash Needs.* Not applicable.

*Section E—Budget Estimate of Federal Funds Needed for Balance of the Project.* This section should only be completed if the total project period exceeds 17 months.

*Totals—Line 20:* For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column ''(b) First.'' If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under ''(c) Second.'' Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

*Section F—Other Budget Information.*

*Direct Charges—Line 21:* Not applicable.

*Indirect Charges—Line 22.* Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

*Remarks—Line 23.* If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project ''abstract.'' It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the project description in Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Need for the Project*
(b) *Goals and Objectives*
(c) *Approach*
(d) *Results and Benefits Expected*
(e) *Level of Effort*

The specific information to be included under each of these headings is described in Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with ''Need for the Project'' as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement. There is no page limit on the length of the narrative.

The length of the remainder of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½″ x 11″ sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances— Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, the Debarment and Other Responsibilities, and the Environmental Tobacco Smoke certifications.

*D. Checklist for a Complete Application*

The checklist below is for your use to ensure that your application package has been properly prepared.

_____One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

_____Application is from an organization which is eligible under the eligibility requirements defined

in the priority area description (screening requirement);

_____Application length, excluding the narrative, does not exceed 60 pages, unless otherwise specified in the project description.

_____A complete application consists of the following items in this order:

_____Application for Federal Assistance (SF 424, REV 4–88);

_____A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

_____Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

_____Budget justification for Section B—Budget Categories;

_____Table of Contents;

_____Letter from the Internal Revenue Service to prove non-profit status, if necessary;

_____Copy of the applicant's approved indirect cost rate agreement, if appropriate;

_____Project summary description and listing of key words;

_____Program Narrative Statement (See Part III);

_____Organizational capability statement, including an organization chart;

_____Any appendices/attachments;

_____Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88); and

_____Certification Regarding Lobbying.

*E. The Application Package*

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACF by telephone at (202) 401–5529.

(Catalog of Federal Domestic Assistance Number 93.671, Family Violence Prevention and Services.)

Dated: March 1, 1995.

**Donald Sykes,**

*Director, Office of Community Services.*

BILLING CODE 4184–01–P

Attachment A

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐ . ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

**13. PROPOSED PROJECT:**

| Start Date | Ending Date |
|---|---|
| | |

**14. CONGRESSIONAL DISTRICTS OF:**

| a. Applicant | b. Project |
|---|---|
| | |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4184–01–C

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name a Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to he State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |

23. Remarks

SF 424A (4-88) Page 2
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**Instructions for the** SF–424A

*General Instructions*

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

*Section A. Budget Summary*

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4). Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated form this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal-Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15.—Enter the totals of amounts on Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Lines 16–19—Enter in Column (a) the same grant program titles shown in column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Non-Construction Programs**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the

right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

_____

Title

_____

Applicant organization

_____

Date submitted

**BILLING CODE 4184–01–M**

Attachment B

## U.S. Department of Health and Human Services
## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

BILLING CODE 4184–01–C

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction.'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions.'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Attachment D—Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–M

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

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Standard Form - LLL

BILLING CODE 4184–01–C

**Attachment E**

*Executive Order 12372—State Single Points of Contact*

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (303) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC. 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Bension, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, Fax (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to:

Linda Clarke, Telephone (809) 774–0750

**Attachment F**

*Certification Regarding Environmental Tobacco Smoke*

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–5409 Filed 3–3–95; 8:45 am]

BILLING CODE 4184–01–P

## Commission on Child and Family Welfare; Hearing

**AGENCY:** Administration for Children and Families, DHHS.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Commission on Child and Family Welfare will hold Public Hearings at the following locations:

On March 28–29, 1995—Alexandria, Virginia, Embassy Suites Hotel, 1900 Diagonal Road

On April 19–20, 1995—Cleveland, Ohio, Forum Conference Center, 1 Cleveland Center, 1375 E. 9th Street

On May 9–10, 1995—San Francisco, California, Holiday Inn Golden Gateway, 1500 Van Ness Avenue

*Mission*

Creating environments in which decisions can best be made about the well-being of children that ensure that children get emotional and financial support from both parents.

*Subject of Hearings: Custody and Visitation*

A. Laws, Policies and Procedures
- determination of how custody and visitation decisions are made and enforced;
- examination of alternative dispute resolution models, standards and guidelines;
- examination of (interstate) mobility factors of parents and children;
- examination of the effectiveness of putative fathers' registries in custody and visitation.

B. Community-Based Alternatives and Support Systems
- examination of community support systems and resources available to parents and families with custody and visitation issues.

C. Child Well-Being Issues: Strengthening the Family
- examination of special populations including: remarried, adoption, domestic violence, immigration, racial and ethnic factors that affect custody and visitation;
- examination of research concerning child adjustment associated with various custody and visitation approaches;
- examination of the dynamics of the absent father syndrome; and
- examination of public policies and procedures working against the viability and support of two-parent families.

*Guidelines for Public Participation*

Persons wishing to provide oral testimony on the subject areas specified above should make a request in writing prior to the hearings by the following dates:

For Alexandria, Virginia—March 17
For Cleveland, Ohio—April 5
For San Francisco, California—April 25

Send your request to: U.S. Commission on Child and Family Welfare, 370 L'Enfant Promenade, SW., Aerospace Building, Room 616, Washington, DC 20447, Phone: (202) 401–5565. Witnesses will be notified of the time of their appearance. Oral testimony may be limited due to time constraints. To ensure thorough consideration of all viewpoints, witnesses and other interested individuals should submit written testimony for inclusion in the printed record of the hearing. Written testimony will be accepted before, but not later than 7 days following, each public hearing. If a sign language interpreter is needed, contact Kevin Costigan at (202) 401–5565 no later than 14 days prior to each meeting.

**FOR FURTHER INFORMATION CONTACT:** Kevin Costigan, Commission on Child and Family Welfare, 370 L'Enfant Promenade SW., Aerospace Bldg., 6th Floor West, Room 616, Washington, DC 20447, (202) 401–5565.

**SUPPLEMENTARY INFORMATION:** None.

Dated: February 27, 1995.

**Ann Rosewater,**

*Deputy Assistant Secretary for Policy and External Affairs.*

[FR Doc. 95–5333 Filed 3–3–95; 8:45 am]

BILLING CODE 4184–01–M

## Food and Drug Administration

## Memorandum of Understanding Between the Food and Drug Administration and the Environmental Protection Agency

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Environmental Protection Agency (EPA). This action is necessary to establish the working arrangements and responsibilities of the two agencies. The purpose of the MOU is to establish an FDA liaison to the EPA Gulf of Mexico Program Office.

**DATES:** The agreement became effective September 29, 1994.

**FOR FURTHER INFORMATION CONTACT:** Juanita Pointer, Center for Food Safety and Applied Nutrition (HFS–669), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4098.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: February 3, 1995,

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

**Memorandum of Understanding Between U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration and Environmental Protection Agency, Gulf of Mexico Program**

*Purpose:*

This Memorandum of Understanding (MOU) is to establish the working arrangements and responsibilities of the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) for the purpose of FDA providing a liaison to the EPA Gulf of Mexico Program Office.

*Background:*

The Gulf of Mexico Program (GMP) was established under the leadership of EPA to develop a comprehensive, intergovernmental strategy to protect and enhance the environmental quality of the Gulf of Mexico. The GMP identified priority issues of environmental degradation and concern, established a Gulf-wide committee framework and infrastructure to ensure communication and information exchange and began implementing a 5-year strategy. The strategy includes:

1. Preparation of environmental characterization reports,

2. Preparation of environmental assessments,

3. Development of an interactive data management system,

4. Preparation of predictive assessments,

5. Development of environmental measurement plans and

6. Development of an environmental monitoring system.

FDA's Office of Seafood was established to strengthen the agency's domestic and imported seafood programs. The Office of Seafood coordinates all of FDA's seafood activities, including those which assure that seafood does not contain harmful amounts of natural or man-made substances, such as toxins, pathogenic microorganisms, industrial chemicals or toxic metals. FDA uses several strategies to accomplish its public health mission. One strategy is to assist EPA in its Gulf of Mexico Program.

*A. The Food and Drug Administration agrees to:*

1. Assign one individual to serve as the principal liaison between FDA and the Gulf of Mexico Program (GMP) with responsibility for managing, coordinating, implementing and evaluating FDA activities in support of the GMP. The FDA liaison:

a. Provides program and technical assistance and coordination of FDA activities with the GMP Technical Steering Committee, Policy Review Committee, technical steering subcommittees and the State, local and Federal agencies participating in the GMP.

b. Serves as Federal Co-Chair of the Public Health Subcommittee with primary responsibility for developing a Public Health Action Plan for the Gulf of Mexico Program and incorporating the recommendations of the National Academy of Sciences Report on Seafood Safety. The plan should address four major elements, three of which are problems for which FDA has the lead:

(1) Illnesses associated with consumption of raw shellfish as a result of naturally occurring pathogens and/or pathogens of fecal origin.

(2) Risks associated with consumption of Gulf of Mexico seafood contaminated with toxic substances or pesticides.

(3) Effects of naturally occurring marine biotoxins on the public health through direct exposure via aerosols and/or exposure via contaminated Gulf seafood.

(4) Illness associated with recreational or occupational use of ambient waters contaminated with sewage.

c. Coordinates, with other GMP participants, the five major aspects of the GMP study: Resource characterization and assessment; problem identification and study design; communication and education; integration with ongoing programs of the Gulf; and development of management, implementation and monitoring strategies.

d. Evaluates technical documents developed by the Technical Steering Subcommittees and other agencies as they relate to public health and GMP issues and for consistency with FDA policies, programs and regulations.

e. Works closely with States to promote cooperation and harmonization of their public health programs as they relate to Gulf of Mexico issues.

f. Serves as the FDA point of contact with the National Shellfish Pollution Indicator Study. Is responsible for keeping the GMP informed of developments and providing program needs to the Indicator Study directors.

g. Develops appropriate projects to evaluate programs and methods of reducing public health risks associated with the use of the waters and resources of the Gulf of Mexico.

h. Serves as project officer on extramural projects to conduct scientific studies of interest to FDA which relate to the Gulf of Mexico Program.

2. Provide the following administrative support to the assigned individual:

a. *Salary*—The FDA employee will remain on the FDA payroll for the entire period of the assignment.
b. *Relocation Expenses*—The cost of relocating the FDA employee to the John C. Stennis Space Center, Mississippi, as provided by policies and procedures relating to reporting to a duty station.
c. *Travel Expenses*—The FDA employee will be provided transportation and per diem expenses while in temporary duty status for the entire period of the assignment.
d. *Equipment*—FDA will provide a personal computer for use by the employee during the entire period of the agreement.

3. Provide annual review of the individual's performance for the entire period of the assignment.

4. *Administrative Support*—Annually provide partial financial support to EPA/GMP to defray part of the overall costs to them for providing services as stated under this IAG. Amount to be worked out between the two agencies.

*B. The Environmental Protection Agency-Gulf of Mexico Program agrees to:*

1. Provide technical supervision and assign day-to-day tasks to the FDA representative to the GMP. The technical and day-to-day assignments will be provided by the Director of the Gulf of Mexico Program; and he shall serve as the EPA's point of contact and the liaison officer for this interagency agreement.

2. Provide the following administrative support to the assigned individual:
a. *Space*—Space will be provided at the GMP Headquarters at the John C. Stennis Space Center; and the space will contain appropriate furniture and conveniences.
b. *Telecommunication*—Telephone service including FTS, Long Distance, and Fax will be provided.
c. *Secretarial Support*—Secretarial support will be provided to include: Typing, xeroxing, dictating, filing, printing, duplicating, and office supplies.

3. The Director, GMP, will provide FDA with written comments on the individual's performance for the specified rating period. The information will be used on the General Workforce Performance Appraisal of the FDA liaison.

*Period of Agreement:*

It is anticipated that this MOU will be for approximately 5 years from the date of signature. Modification of the MOU shall be by mutual consent of the parties. However, if either party desires to terminate this MOU, a written notice to the other party shall be forwarded and received 30 days in advance of the desired termination date.

**Approved and Accepted for the Environmental Protection Agency Gulf of Mexico Program**

By: Douglas A. Lipka
Title: Acting Director
Date: September 29, 1994

**Approved and Accepted for the Food and Drug Administration**

By: Fred R. Shank
Title: Director, Center for Food Safety and Applied Nutrition

Dated: September 22, 1994.

[FR Doc. 95–5309 Filed 3–3–95; 8:45 am]

**BILLING CODE 4160–01–F**

## Health Resources and Services Administration

## Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

**AGENCY:** Health Resources and Services Administration, PHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that approximately $42.4 million will be available in fiscal year (FY) 1995 for: (1) Awards for educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (LRP) (Section 338B of the Public Health Service (PHS) Act) and (2) grants to States to operate loan repayment programs (Section 338I of the PHS Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC LRP and invites States to apply for grants to operate State Loan Repayment Programs (LRPs). The HRSA estimates that approximately 550 NHSC Loan Repayment awards totaling $35.4 million will be made to health professionals providing primary health services. Approximately $7 million in discretionary grants will be available to States to operate LRPs. Approximately $3 million will be available to support 10 competing continuation grants and 3 to 5 new starts. The range for these grants is approximately $20,000 to $1 million. Approximately $4 million is available for 19 noncompeting continuation grants. Awards will be made for a 1-year budget period and for up to a 5-year project period.

The PHS is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting health priority areas. These programs will contribute to the *Healthy People 2000* objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report, Stock No. 017–001–00474–01) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Part A of this notice contains specific information concerning the NHSC LRP, and Part B contains specific information concerning grants for State LRPs.

### Part A—NHSC Loan Repayment Program

**ADDRESSES:** Application materials may be obtained by calling or writing to: National Health Service Corps Loan Repayment Program, 8201 Greensboro Drive, Suite 600, McLean, Virginia 22102, 1–800–221–9393 or (703) 734–6855. Completed applications must be returned to: Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, (301) 594–4400. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is 301–594–4981. Applicants for the NHSC LRP will use HRSA Form 873 approved under Office of Management and Budget (OMB) Number 0915–0127.

**DATES:** To receive consideration for funding, health professionals must submit their applications by August 1, 1995. To assure early processing of the application and approval for site matching, individuals are encouraged to submit applications well ahead of the August 1 deadline.

Applications will be considered to be on time if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

**FOR FURTHER INFORMATION CONTACT:** For further program information and technical assistance, please contact the Loan Repayment Programs Branch at the above address, phone or FAX number.

**SUPPLEMENTARY INFORMATION:** Section 338B of the PHS Act (42 U.S.C. 254l–1) authorizes the Secretary to establish the NHSC LRP to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in federally designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, general internal medicine, general pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC LRP, the Secretary will repay graduate and undergraduate educational loans incurred by primary care health professionals. For the first 2 years of full-time service at an approved site in a designated HPSA, the Secretary will repay up to $25,000 per year of the educational loans of such individual. (There is a minimum 2-year service obligation.) For subsequent years of full-time service, if the NHSC LRP contract is extended, the Secretary will repay up to $35,000 per year. Payments may be made to participants on an advanced quarterly basis (one quarter in advance of service for the entire service obligation), on an advanced annual basis (one year in advance of service for each year of service) or on an advanced biennial basis (2 years in advance of service but only for the first 2 years of a contract). The Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved. In addition to these amounts, NHSC LRP participants will receive a salary from a private nonprofit or public entity or, in some cases, the Federal Government during the term of their service.

The Secretary will identify and make available annually a list of those HPSA sites which will be available for service repayment under the NHSC LRP. The Secretary will select applicants for consideration for participation in the NHSC LRP according to the following criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined in this notice at the end of Part A.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board, and in the case of other health professions, are certified in their specialty), and have a current and unrestricted license to practice their profession in a State, will receive highest consideration.

(5) The academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

In providing contracts under the NHSC LRP, priority will be given to an applicant:

- Whose health profession or specialty is most needed by the NHSC;
- Who has and whose spouse, if any, has characteristics that increase the probability of continuing to serve in a HPSA upon completion of his or her service obligation;
- Who is from a disadvantaged background, subject to the preceding paragraph.

Eligible Participants: To be eligible to participate in the NHSC LRP, an individual must:

(1) (a) Have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant. Other health professions include clinical psychology, clinical social work, and dental hygiene.

(b) Be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or

(c) Be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession;

(2) Be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the PHS or be eligible for selection for civilian service in the NHSC; and

(3) Submit an application for a contract to participate in the NHSC LRP which contract describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the NHSC LRP. Any individual who has a judgment lien against his or her property for a debt to the United States is ineligible to participate in the NHSC LRP until the judgment is paid in full or otherwise satisfied.

No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC LRP contract. All individuals must have a current and unrestricted license to practice their profession in a State prior to beginning service under this Program.

*Professions and Specialities Needed by the NHSC*

At this time, the Secretary has determined, based on community demand, that priority will be given to the following health professionals: physicians (M.D.s and D.O.s) who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, obstetrics/gynecology, internal medicine, and pediatrics.

*Other Award Information*

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals. In addition, this program is not subject to the Public Health System Reporting Requirements, since the requirements do not cover payment to individuals.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.162.

## Part B—Grants for State Loan Repayment Programs

**ADDRESSES:** Application materials for State Loan Repayment Programs may be obtained from: Alice H. Thomas, Grants Management Officer, HRSA/BPHC/GMB, 4350 East-West Highway, Room 11–1C3, Bethesda, Maryland 20814, (301) 594–4260, FAX (301) 594–4073. Completed new and competing applications must be returned to: Bureau of Primary Health Care, Grants Management Officer, c/o Houston Associates, Inc., 1010 Wayne Avenue, Suite 240, Silver Spring, Maryland 20910. Completed applications for budget period renewals (i.e., non-competing continuations) must be returned to: Alice H. Thomas, Grants Management Officer, HRSA/BPHC/GMB, 4350 East-West Highway, Room 11–1C3, Bethesda, Maryland 20814, (301) 594–4260 and FAX (301) 594–4073. The Grants Management staff is available to provide assistance on business management issues.

Application for these grants will be made on PHS Form 5161–1 (revised in July 1992) with revised face sheet DHHS Form 424, as approved by the OMB under control number 0937–0189. Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

**DATES:** Applications are due April 1, 1995. Applications will be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant, except to the extent the BPHC Office of Grants Management may authorize acceptance of a late application. Please contact Beth Rosenfeld at (301) 594–4235 if you have a question regarding receipt of applications.

**FOR FURTHER INFORMATION CONTACT:** For general program information and technical assistance, please contact Clarke E. Gordon, Chief, Loan Repayment Programs Branch, HRSA/BPHC/DSLR, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, (301) 594–4400. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is (301) 594–4981.

**SUPPLEMENTARY INFORMATION:** Section 338I of the PHS Act (42 U.S.C. 254q–1) authorizes the Secretary, acting through the Administrator, HRSA, to make grants to States for the purpose of assisting the States in operating programs as described in this notice for the repayment of educational loans of health professionals in return for their practice in federally designated health professional shortage areas (HPSAs) to increase the availability of primary health services in federally designated HPSAs.

*Eligibility Requirements*

State Loan Repayment Programs (LRPs) eligible for funding under this announcement must meet the following requirements:

(1) direct administration by a State agency;

(2) payment of all or part of the qualifying educational loans (including principal, interest, and related educational loan expenses) of health professionals agreeing to provide primary health services in federally designated HPSAs. ''Qualifying educational

loans'' are Government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the graduate or undergraduate education of a health professional;

(3) assignment of participating health professionals only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs; and

(4) participant contracts which provide remedies for any breach of contract by participating health professionals.

*Contract Requirements*

Contracts provided by a State are not to be on terms that are more favorable to health professionals than the most favorable terms the Secretary is authorized to provide for contracts under the Federal NHSC Loan Repayment Programs under Section 338B of the PHS Act, including terms regarding:

(1) The annual amount of payments provided on behalf of the professionals regarding educational loans; and

(2) The availability of remedies for any breach of the contracts by the health professionals involved.

States are required to develop contracts that reflect a minimum of 2 years of obligated full-time clinical service. The annual amount of payments under a contract may not exceed $35,000, unless (1) this excess amount is paid solely from non-Federal contributions, and (2) the contract provides that the health professional involved will satisfy the requirement of full-time clinical service under the contract solely through the provision of primary health services in a federally designated HPSA that is receiving priority for the purposes of section 333A(a)(1), and is authorized to receive assignments of individuals who are participating in the NHSC Scholarship Program.

No loan repayments will be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract, and no credit will be given for any practice done while the provider is in a professional school or graduate training program. Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the State LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the State LRP. Any individual who has a judgment lien against his or her property for a debt to the United States is ineligible to participate in the State LRP until the judgment is paid in full or otherwise satisfied.

*Program Requirements*

States seeking support under this notice for the cost of State LRPs must provide adequate assurances that:

(1) With respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant. The Federal grant funds and the State matching funds will be used only for loan repayments to health professionals who have entered into contracts with States. In determining the amount of non-Federal contributions in cash that a State has to provide, no other Federal funds may be used.

(2) The State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs, and identify each site available for placement.

(3) Applications must identify the State entity and key personnel who will administer the grant.

(4) With respect to contracts between the State and the health professional, all contract breaches, by either party, will be reported regularly.

*Future Support*

The Secretary must determine that the State has complied with each of the agreements of the grant in order for funding to continue. Before making a grant for a subsequent year of State LRP support, the Secretary will, in the case of a State with one or more initial breaches by health professionals of the repayment contracts, reduce the amount of a grant to the State for the fiscal year involved. The grant will be reduced by an amount equal to the sum of the expenditures of Federal funds made regarding the State LRP contracts involved, including interest on the amount of such expenditures, determined on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States. The Secretary may waive the reduction in the subsequent grant award if the Secretary determines that a health professional's breach was attributable solely to the professional having a serious illness or has died.

*Evaluation Criteria*

For new and competing continuation grants the following criteria will be used to evaluate State applications to determine which States are to be supported under this notice: (a) the extent of State's need for health professionals consistent with the health professions and specialties identified later in this notice; (b) the extent to which special consideration will be extended to federally designated HPSAs with large minority populations; (c) the number and type of providers the State proposes to support through this program; (d) the appropriateness of the proposed placements of State LRP recipients (e.g., consistency and coordination with State-based plans to improve access to primary health services for the underserved communities and individuals); (e) the appropriateness of the qualifications, the administrative and managerial ability of the staff to implement the proposed project; (f) the suitability of the State's approach and the degree to which the plan of a State is coordinated with Federal, State, and other programs for meeting the State's health professional needs and resources, including mechanisms for ongoing evaluation of the program's activities; (g) the source and plans for the use of the State match (the degree to which the State match exceeds the minimum requirements or has increased over time, the amount of the match relative to the needs and resources of the State, and the adequacy and appropriateness of the proposed budget).

For competing continuation applicants only, the following criteria will be used: (a) the grantee's progress in achieving stated goals and objectives for the previous year's grant including the impact the State LRP placements have had on the State's short-term and long-term health professional needs; (b) an assessment of the number of and the reasons for initial breaches by health professionals of repayment contracts; and (c) the grantee's history of compliance with reporting requirements including goals, objectives, evaluation plans, organizational structure, financial management, and personnel changes.

*Professions and Specialties Needed*

To be supported under this program, the State Program must establish State priorities for the selection of health professionals consistent with the NHSC LRP. At this time the Secretary has determined that priority will be given to the following health professionals: physicians (M.D.s and D.O.s) who are certified or eligible to sit for the

certifying examination in the specialty boards of family practice, obstetrics/gynecology, internal medicine, and pediatrics.

*Other Award Information*

This program is not subject to the Public Health System Reporting Requirements.

This program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system to review applications from within their States under certain Federal programs. The application kit, to be made available under this notice, will contain a listing of States which have chosen to set up a review system and will provide a single point of contact (SPOC) in the States for that review. Applicants (other than federally recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.165.

Dated: February 28, 1995.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 95–5354 Filed 3–3–95; 8:45 am]

BILLING CODE 4160–15–P

## National Institutes of Health

### National Institute on Drug Abuse; Notice of Meeting

Notice is hereby given of the meeting of an Ad Hoc Subcommittee of the Extramural Science Advisory Board, National Institute on Drug Abuse on March 13–14, 1995, from 9 a.m. to 5 p.m. at the Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857.

The Ad Hoc Subcommittee will discuss NIDA's program areas and extramural programs. This meeting will be open to the public, however, attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, or to request substantive program information contact Ms. Jacqueline P. Downing, Room 10A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–1056).

A summary of the meeting and a roster of members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Dated: February 27, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–5338 Filed 3–3–95; 8:45 am]

BILLING CODE 4140–01–M

### Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications
Name of SEP: Behavioral and Neurosciences
Date: March 21, 1995
Time: 8:00 a.m.
Place: Embassy Suites, Chevy Chase, MD
Contact Person: Dr. David Simpson, Scientific Review Administrator, 5333 Westbard Ave., Room 328, Bethesda, MD 20892, (301) 594–7171

Name of SEP: Microbiological and Immunological Sciences
Date: March 23, 1995
Time: 2:30 p.m.
Place: NIH, Westwood Building, Room 404A
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 5333 Westbard Ave., Room 404A, Bethesda, MD 20892, (301) 594–7112

Name of SEP: Microbiological and Immunological Sciences
Date: March 24, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 404A Telephone Conference
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 5333 Westbard Ave., Room 404A, Bethesda, MD 20892, (301) 594–7112

Name of SEP: Microbiological and Immunological Sciences
Date: March 28, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 404A Telephone Conference
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 5333 Westbard Ave., Room 404A, Bethesda, MD 20892, (301) 594–7112

Name of SEP: Microbiological and Immunological Sciences
Date: March 28, 1995
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 28, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 29, 1995
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 29, 1995
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences
Date: March 30, 1995
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236 Telephone Conference
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Multidisciplinary Sciences
Date: March 31, 1995
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 2A18A Telephone Conference
Contact Person: Dr. Harish Chopra, Scientific Review Admin., 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594–7342

Name of SEP: Clinical Sciences
Date: April 3, 1994
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 349 Telephone Conference
Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254

Name of SEP: Behavioral and Neurosciences
Date: April 4, 1995
Time: 3:30 p.m.
Place: NIH, Westwood Building, Room 319C Telephone Conference
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard

Ave., Room 319C, Bethesda, MD 20892, (301) 594–7358

Name of SEP: Biological and Physiological Sciences

Date: April 10, 1995

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 234 Telephone Conference

Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 5333 Westbard Ave., Room 234, Bethesda, MD 20892, (301) 594–7051.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 27, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–5339 Filed 3–3–95; 8:45 am]

BILLING CODE 4140–01–M

## Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review Small Business Innovation Research Program grant applications.

*Name of SEP:* Behavioral and Neurosciences.

*Date:* March 15, 1995.

*Time:* 9:00 a.m.

*Place:* Guest Quarters Hotel, Washington, DC.

*Contact Person:* Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7257.

*Name of SEP:* Clinical Sciences.

*Date:* April 3, 1995.

*Time:* 8:00 a.m.

*Place:* Crowne Plaza, Rockville, MD.

*Contact Person:* Dr. Jeanne Ketley, Chief, Clinical Sciences, 5333 Westbard Ave., Room 203, Bethesda, MD 20892, (301) 594–7375.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* April 6–7, 1995.

*Time:* 8:30 a.m.

*Place:* Ramada Inn, Rockville, MD.

*Contact Person:* Dr. Gerald Liddel, Scientific Review Admin., 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167.

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Clinical Sciences.

*Date:* March 24, 1995.

*Time:* 1:00 p.m.

*Place:* NIH, Westwood Building, Room 219C Telephone Conference.

*Contact Person:* Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., Room 219C, Bethesda, MD 20892, (301) 594–7130..

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 27, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–5340 Filed 3–3–95; 8:45 am]

BILLING CODE 4140–01–M

## Substance Abuse and Mental Health Services Administration

## Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 1995.

The meeting agenda will include discussion of announcements and reports of administrative, legislative, and program developments. It will also include reviews of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of this meeting and roster of committee members may be obtained from: Ms. Vera Hunter, Acting Committee Management Officer, CSAP, Rockwall II Building, Suite 7A–140, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–9540.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Drug Testing Advisory Board

Meeting Date(s): March 30, 1995

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20857

Open: March 30, 1995 8:30 a.m.–11:00 a.m.

Closed: March 30, 1995 11:00 a.m.–Adjournment

Contact: Donna M. Bush, Ph.D., Parklawn Building, Room 13A–54, Telephone: (301) 443–6014.

Dated: February 28, 1995.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 95–5355 Filed 3–3–95; 8:45 am]

BILLING CODE 4162–20–P

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife, Interior.

**ACTION:** Notice of intent and meeting.

Preparation of an Environmental Impact Statement in Anticipation of Receiving a Permit Application to Incidentally Take Threatened and Endangered Species in Association with a Multiple Species Conservation Plan for Southwestern San Diego County, California.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) has under consideration for approval the draft Multiple Species Conservation Program (MSCP) plan submitted by the City of San Diego, California. This long-term plan, prepared by the City of San Diego and 11 other participating jurisdictions, will accompany a future application to the Service for a permit under section 10(a) of the Endangered Species Act that would authorize incidental take of listed species. Additionally, the applicants will request pre-listing agreements for species which may be listed in the future. In response to the plan, the Service intends to prepare a joint programmatic and project-level Environmental Impact Statement/Environmental Impact Report (EIS/EIR) pursuant to the National Environmental Policy Act (NEPA) and the California

Environmental Quality Act. The MSCP plan covers an approximately 900-square-mile area of rapid growth in southwestern San Diego County. The plan addresses numerous sensitive plant and animal species and their habitats. The MSCP creates a process for the issuance of permits and other authorizations under the Federal ESA, California ESA, and the California Natural Community Conservation Planning Act. This notice describes the proposed action and possible alternatives, notifies the public of a scoping meeting, invites public participation in the scoping process for preparing the joint EIS/EIR, solicits written comments, and identifies the Service official to whom questions and comments concerning the proposed action and the joint EIS/EIR may be directed.

**DATES:** A public scoping meeting will be held from 7 p.m. to 10 p.m. on March 15, 1995, at the Scottish Rite Center, 1895 Camino del Rio South, San Diego, California 92108. Oral comments will be received during the scoping meeting. Written comments are encouraged and should be received on or before April 5, 1995, at the address below.

**ADDRESSES:** Information, comments, or questions related to preparation of the joint EIS/EIR and the NEPA process should be submitted to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to telephone (619) 431–9618.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Gilbert, Supervisory Fish and Wildlife Biologist, at the above Carlsbad address, telephone (619) 431–9440. Persons wishing to obtain background material should contact the City of San Diego, Development Services Division, Environmental Analysis Section, 1222 First Avenue, 5th Floor, San Diego, California 92101, telephone (619) 236–6268. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the above San Diego office.

**SUPPLEMENTARY INFORMATION:**

## Background

The MSCP study area occupies portions of the unincorporated County of San Diego and 10 additional city jurisdictions. The southern boundary of the MSCP study area is the international border with Mexico. National forest lands form much of the eastern boundary, the Pacific Ocean lies to the west, and the northern boundary is the San Dieguito River Valley. Conservation planning to the north of the MSCP study area is being conducted by the San Diego Association of Governments, and a coalition of 8 north county cities and San Diego County. San Diego County is responsible for conservation planning in the eastern portion of the county.

The diversity of topography, soils, and climate in the study area combine to influence vegetative associations, which in turn support a high diversity of plant and animal species. Topographic features in the study area include broad flat valleys, deep canyons, perennially flowing rivers and intermittent creeks, moderately sloped terrain and steep hillsides, rolling foothills and nearly level mesas, coastal bluffs, and a series of coastal bays, inlets, and lagoons. Elevations range from mean sea level (msl) along the coast to approximately 3,738 feet above msl.

The objectives of the MSCP are to:

1. Develop a program for the maintenance of biological diversity and the conservation/protection of self-sustaining viable populations of federally-listed endangered, threatened, and key candidate species and their habitats.

2. Define a Multi-Habitat Planning Area (MHPA) within which preserve planning is focused or within which a preserve is defined, and implement a preserve system which conserves viable habitat and provides for wildlife use and movement.

3. Reduce the human-related causes of species' extirpation within the MSCP study area.

4. Establish a partnership among State, Federal, and local agencies of government to facilitate mitigation and approval of public and private sector land development and construction projects by expediting acquisition of Federal and State permits. This action would provide a long-term economic benefit.

The biological goal for the preserve design is preservation of as much of the core biological resource areas and linkages as possible. The economic goal is for the ultimate preserve to be affordable and for the costs to be shared equitably among the participants.

The plan proposes a new process for wildlife and habitat conservation, and for implementation of the Federal and State of California ESAs, which relies on existing local agency land use review and approval authority. The new process places conservation responsibilities on local jurisdictions, based on their ability to implement a segment of the MSCP for their jurisdiction. In exchange for these coordinated conservation plans, local jurisdictions will receive from the Service permits for the taking of federally-listed species and will enter into pre-listing agreements for protection of other species of concern. A list of covered animal and plant species is incorporated in the MSCP Plan, including species that are federally or state-listed, proposed for listing, and candidates for listing.

The lands identified for open space and habitat preservation are located within the MHPA. The MHPA was cooperatively designed by the 12 participating jurisdictions in the MSCP study area, in consultation with the Service and California Department of Fish and Game, major property owners and environmental groups, based on biological, ownership, and land use criteria. Planning staff of the 5 jurisdictions that have the largest amounts of remaining habitat in the MSCP study area (County of San Diego and cities of San Diego, Chula Vista, Poway, and Santee) spent several months developing ''soft lines'' delineating areas within which specified percentages of land would be preserved and ''hard lines'' delineating 100% preservation areas. The other local jurisdictions within the MSCP study area were asked to comment on a preserve design based solely on public ownership and general plan open-space designations. The resulting MHPA covers 164,326 acres of habitat.

The habitat conservation described by the MHPA is approximate. The MHPA may be modified during the course of subsequent land use and project planning, as long as the changes are consistent with MSCP objectives. Preserve boundaries, approved through either the MSCP plan or subsequent land use plans, may be adjusted without the need to amend the MSCP plan, or applicable land use plans, when the new preserve boundary results in a preserve area that is equivalent in biological value to the original configuration or is of greater biological value.

Although the City of San Diego will prepare the draft EIS, the Service will be responsible for its content and scope. In addition, the City of San Diego will act as the lead agency for the preparation of the EIR.

Project level environmental documentation will be included in the joint EIS/EIR for amendments to a variety of planning documents for the cities of San Diego, Chula Vista, and Santee. The proposed amendments would incorporate the preserve boundaries of the MSCP plan into adopted land use plans. Actions

proposed by these 3 cities that will be addressed in the joint EIS/EIR include, but are not limited to, amendments to progress guides and general plans, local coastal programs, community plans, precise plans, and zoning ordinances.

The joint EIS/EIR will consider the proposed action (issuance of a section 10(a) ESA permit for the MSCP plan), and a reasonable range of alternatives derived from scenarios considered during development of the MSCP plan:

*Alternative 1:* Coastal Sage Scrub Scenario. This alternative would focus on preservation of the highest quality coastal sage scrub in the planning area with less emphasis on preserving other habitat types.

*Alternative 2:* Biologically Preferred/Core and Linkage Area Scenario. This alternative would attempt to preserve those lands with the highest conservation value in the planning area, including multiple habitats and habitat linkages. This alternative is based heavily on biological criteria rather than other land use issues that determine the feasibility of preservation.

*Alternative 3:* Public Lands Scenario. This alternative relies more heavily than the proposed plan on public lands and open space associated with existing or proposed development.

*Alternative 4:* No Project (No Preserve) Scenario. This alternative assumes that conservation practices throughout the study area would occur on a project-by-project basis as occurs under existing conditions. Under the no project alternative, a regional preserve would not be established at this time within the MSCP study area.

Environmental review of the MSCP will be conducted in accordance with the requirements of the 1969 NEPA, as amended (42 U.S.C. 4321 et seq.), NEPA regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the NEPA to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the joint EIS/EIR.

Comments and participation in the scoping process are solicited. The primary purpose of the scoping process is to identify rather than to debate the significant issues related to the proposed action. Interested persons are encouraged to attend the public scoping meeting to identify and discuss issues and alternatives that should be addressed in the joint EIS/EIR. The proposed agenda for this facilitated meeting includes a summary of the proposed action; status of and threats to subject species; and tentative issues, concerns, opportunities, and alternatives. Additional public meetings will be conducted on later dates to provide more opportunities to comment on the draft EIS/EIR.

Dated: February 28, 1995.

**Thomas J. Dwyer,**

*Deputy Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 95–5380 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–55–P

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## Endangered and Threatened Species Permit Application

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

**ACTION:** Notice.

Notice of Additional Public Involvement Opportunities for the Preparation of an Environmental Impact Statement to Allow Incidental Take of Four Threatened Species on Lands Administered by Plum Creek Timber Company in the State of Washington.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service (Service) has added another scoping workshop to assist in gathering information necessary for the preparation of an Environmental Impact Statement (EIS). The EIS will consider a permit application by Plum Creek Timber Company, L.P., to take federally listed species, under the provisions of section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. It will also consider the development of an unlisted species agreement. This notice supplements the notice of intent published in the February 8 **Federal Register** (60 FR 7577).

**DATES:** Written comments regarding the scope of the EIS should be received on or before March 10, 1995. A scoping workshop will be held on March 8, 1995.

**ADDRESSES:** Written comments should be addressed to Mr. Curt Smitch; U.S. Fish and Wildlife Service; 3773 Martin Way East; Building C, Suite 101; Olympia, Washington 98501. Comments received will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday). A scoping workshop will be held from 6:30–9:00 p.m. in the Cafeteria Area of the Walter Strom Middle School; 2694 State Route 903 (between Cle Elum and Roslyn); Cle Elum, Washington 98922.

**FOR FURTHER INFORMATION CONTACT:** William Vogel, Wildlife Biologist; U.S. Fish and Wildlife Service; 3773 Martin Way East; Building C, Suite 101; Olympia, Washington 98501, (360) 534–9330.

**SUPPLEMENTARY INFORMATION:** A scoping workshop was held on February 22, 1995, in Bellevue, Washington. As a further opportunity for interested persons to comment on this planning effort, an additional scoping workshop is scheduled for 6:30–9:00 p.m. on March 8, 1995. The workshop location will be the Cafeteria Area of the Walter Strom Middle School; 2694 State Route 903 (between Cle Elum and Roslyn); Cle Elum, Washington 98922.

Interested parties may contact the Service at the address listed above to receive additional information, including a map for the workshop location.

Dated: February 28, 1995.

**Frances J Dyer,**

*Deputy Regional Director.*

[FR Doc. 95–5381 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–55–P

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## Wild Bird Conservation Act of 1992; Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a public meeting to discuss opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations, under the Wild Bird Conservation Act (WBCA) of 1992.

**DATES:** The public meeting will be held on April 6, 1995, from 9:30 a.m. to 1:00 p.m.

**ADDRESSES:** The public meeting will be held in Room 200 of the U.S. Fish and Wildlife Service building, 4401 North Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Susan S. Lieberman or Dr. Rosemarie S. Gnam, Office of Management Authority, at (703) 358–2095.

**SUPPLEMENTARY INFORMATION:**

### Background

The Wild Bird Conservation Act of 1992, hereinafter referred to as WBCA, was enacted October 23, 1992, the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and

transport; and assisting wild bird conservation and management programs in countries of origin.

Section 114 of the WBCA requires that ''the Secretary, in consultation with appropriate representatives of industry, the conservation community, the Secretariat of the Convention, and other national and international bodies shall:

(1) Review opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and provision of privately organized or funded technical assistance to other nations; and

(2) Report to the Congress the results of this review within 2 years after the date of enactment of this Act''.

In accordance with the WBCA, and in an attempt to comply with the intent of Congress that the aforementioned opportunities be reviewed and considered, the Service wishes to initiate a discussion of this topic and invite review and input from the public. By this notice, the Service announces a public meeting to discuss the opportunities for a voluntary program of labeling exotic birds, certification of exotic bird breeding facilities and retail outlets, and technical assistance. This meeting will serve as a working session and the Service will facilitate the discussion of these topics and report to Congress the results of such discussions. Interested members of the public may also submit written comments to the Service on this issue, which should be addressed to the Office of Management Authority [see **ADDRESSES**, above].

**Author:** This notice was prepared by Rosemarie S. Gnam, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095; FAX 703/358–2280).

Dated: February 24, 1995.

**Bruce Blanchard,**

*Director.*

[FR Doc. 95–5360 Filed 3–3–95; 8:45 am]

**BILLING CODE 4310–55–P**

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## Bureau of Land Management

**[WY–920–05–1320–01]**

## Notice of Competitive Coal Lease Sale

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of competitive coal lease sale (Eagle Butte Tract, WYW124783).

**SUMMARY:** Notice is hereby given that certain coal resources in the Eagle Butte Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 2 p.m., Wednesday, April 5, 1995. Sealed bids must be submitted on or before 4 p.m., Tuesday, April 4, 1995.

**ADDRESSES:** The lease sale will be held in the Third Floor Conference Room, Wyoming State Office (WSO), 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, WSO, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Laura Steele, Land Law Examiner, or Eugene Jonart, Coal Coordinator, at 307–775–6250.

**SUPPLEMENTARY INFORMATION:** This coal lease sale is being held in response to an application for a lease by application competitive coal lease sale filed by AMAX Land Company (formerly, Meadowlark Farms, Inc.) of Gillette, WY. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 3 miles north of Gillette, WY:

T. 51 N., R. 72 W., 6th P.M., Wyoming
Sec. 28: Lot 13 (W2);
Sec. 33: Lots 1 thru 4, 5 (E2), 6 thru 11, 12 (E2), and 14 thru 16;
Sec. 34: Lots 3 thru 6, and 9 thru 16.
Containing 1,059.175 acres.

The Eagle Butte Tract, located adjacent to the existing Eagle Butte mine, contains the Roland and Smith coal seams both of which are in the Fort Union Formation. The Roland seam averages about 40 ft. thick and the Smith seam averages about 61 ft. thick on the LBA area. The Roland seam is thicker in the LBA area than some adjacent portions of existing leases. This is due to an upper zone of the seam becoming dominantly coal on the LBA, whereas the same zone is an interbedded claystone and coal on the existing leases. Total burden on the LBA averages 217 ft. thick. There is a shaly coal split separating the Smith and Roland seems averaging about 4 ft. thick on the LBA tract. The average in-place stripping ratio (BCY/ton) for the LBA tract is estimated to be 1.99:1.

The tract contains an estimated 188,500,000 tons of in-place coal reserves. However, about 115 acres of the tract are unavailable for mining because of a required buffer for U.S. Highway 14/16. The BLM estimates that this buffer reduces minable reserves to approximately 166,400,000 tons.

The coal rank is subbituminous C. Average as received quality for the Roland seam on the LBA is 8434 BTU/LB., 4.95% ash, and 0.54% sulfur. Average as received quality for the Smith seam on the LBA tract is 8341 BTU/LB., 4.23% ash, and 0.22% sulfur. This places the coal reserves in the LBA tract just slightly below average in heat content for coal being mined in this portion of the Power River Basin. Other quality parameters compare favorably with coal presently being mined in this area.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value for the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bid should be sent by *''CERTIFIED MAIL—RETURN RECEIPT REQUESTED''*, or be hand-delivered. The Cashier will issue a receipt for each hand-delivered bid. *Bids received after 4 p.m., Tuesday, April 4, 1995, will not be considered.* The minimum bid is not intended to represent fair market value (FMV). The FMV of the tract will be determined by the authorized officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre, or fraction thereof, *and* of a royalty payment to the U.S. of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250(f).

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the WSO at the addresses above. Case file documents are available for inspection at the WSO.

**Robert A. Bennett,**

*DSD, Mineral Resources.*

[FR Doc. 95–5379 Filed 3–3–95; 8:45 am]

**BILLING CODE 4310–22–M**

**[AZ–024–1330–00]**

## Intent To Amend the Phoenix Resource Management Plan and the Safford District Resource Management Plan, Arizona

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice of Intent.

**SUMMARY:** The Bureau of Land Management, Phoenix District, in response to a land exchange proposal, is preparing an Environmental Assessment to amend the Phoenix Resource Management Plan and the Safford District Resource Management Plan (RMPs) in compliance with the Federal Land Policy and Management Act of 1976, as amended, and Section 102(2)(c) of the National Environment Policy Act of 1969. The exchange, as proposed, involves trading selected public lands for private lands with high resource values. The public lands selected include 160 non-wilderness acres of the remaining segments of the White Canyon Area of Critical Environmental Concern (ACEC)—most of the ACEC is now managed as the White Canyon Wilderness—and 4,561 acres which were designated as retention lands within the RMPs. Three hundred fifty-five (355) of these selected public lands were transferred from the Safford District to the Phoenix Resource Area (Phoenix District) under a 1991 boundary adjustment. The proposed land exchange will be analyzed under a separate environmental impact statement (**Federal Register** Notice of Intent, December 19, 1994: 65383). Management actions proposed in the Environmental Assessment include altering the ACEC designation and changing the classification of selected public lands from retention to disposal parcels available under an exchange. The Environmental Assessment to amend the two Resource Management Plans will identify a proposed action and no action alternative as well as appropriate alternatives derived through the analysis of planning issues and criteria. Once the Environmental Assessment draft has been completed, a Notice of Availability will be published in the **Federal Register** followed by a 60-day comment period.

Public comment is needed now to identify issues and criteria for consideration during the amendment process. Public open houses/scoping meetings will be held at the following locations and times:

Florence Open House, March 28, 1995, 4–8 p.m. at the Florence Unified School District Office, Administration Building, 350 S. Main St., Florence, AZ 85232, (602) 868–2300. Mesa Open House, March 30, 1995, 4–8 p.m. at the Rendezvous Center, 263 North Center Street, Mesa, Arizona (602) 644–2178.

**DATES:** Written public comments may be submitted during the open houses or to the address given below. Public comments will be accepted until April 10, 1995.

**ADDRESSES:** Written comments should be mailed to, and copies of the scoping documentation are available from: Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, ATTENTION McFARLIN AMENDMENT.

**FOR FURTHER INFORMATION, CONTACT:** Shela McFarlin, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027 or telephone (602) 780–8090.

Dated February 28, 1995.

**David J. Miller,**

*Associate District Manager.*

[FR Doc. 95–5432 Filed 3–3–95; 8:45 am]

BILLING CODE 4310–32–P

## INTERSTATE COMMERCE COMMISSION

### Release of Waybill Data

The Commission has received a request from Covington & Burling and Union Pacific Corporation (UP) for permission to use certain data from the 1993 I.C.C. Waybill Sample. A copy of the request (WB468–2/23/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–5389 Filed 3–3–95; 8:45 am]

BILLING CODE 7035–01–P

**[Docket No. AB–43 (Sub-No. 166X)]**

### Illinois Central Railroad Company—Abandonment Exemption—in Smith County, MS

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 3-mile line of railroad (known as the Taylorsville, MS line) between milepost MB–128.50 and MB–131.50 in Taylorsville, Smith County, MS.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective April 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 16, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, 20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 10, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 24, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–5391 Filed 3–3–95; 8:45 am]

BILLING CODE 7035–01–P

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**[Finance Docket Nos. 32476, 32623 and 32624]**

## Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV; Northern Nevada Railroad Corporation—Modified Rail Certificate—Between McGill Junction and Keystone, NV, and Northern Nevada Railroad Corporation—Modified Rail Certificate—Between Cobre and McGill Junction, NV

The Northern Nevada Railroad Corporation (Northern Nevada) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 3.13 mile rail line in White Pine County, NV. The Commission's Section of Environmental Analysis (SEA) has prepared its Environmental Assessment (EA) which analyzes the environmental impacts associated with this construction project and related operations over rail lines between McGill Junction and Keystone, Nevada and Cobre and McGill Junction, Nevada. Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions that would implement the mitigation measures contained in the EA.

The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this EA should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Mr. Harold McNulty (202) 927–6217. Requests for copies of the EA should also be directed to Mr. McNulty.

Date made available to the public: March 3, 1995.

Comment due date: April 3, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–5390 Filed 3–3–95; 8:45 am]

BILLING CODE 7035–01–P

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# LIBRARY OF CONGRESS

## Copyright Office

**[Docket No. 95–1 CARP DD 92–94]**

## Ascertainment of Controversy for 1994 Digital Audio Recording Royalty Funds

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Copyright Office directs all claimants to royalty fees collected for Digital Audio Recording Devices and Media (DART) for the 1992 and 1993 Musical Works Fund, and the 1994 Musical Works and Sound Recordings Funds, to submit comments as to whether a controversy exists as to the distribution of these funds. The Office also announces the deadline for filing Notices of Intent to Participate in royalty distribution.

**DATES:** Written comments due by April 15, 1995. Notices of Intent to Participate are due May 5, 1995.

**ADDRESSES:** If sent by mail, an original and five copies of written comments and Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–407, James Madison Memorial Building, 101 Independence Avenue SE., Washington, DC 20540. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments and Notices of Intent to Participate be delivered by private messenger service.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Kretsinger, Acting General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202)707–8380.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 28, 1992, Congress enacted the Audio Home Recording Act. This Act requires manufacturers and importers to pay royalties on digital audio recording devices and media (DART) that are distributed in the United States. The royalties are deposited with the Copyright Office and distributed by Copyright Arbitration Royalty Panels (CARPs) [1], convened by the Librarian of Congress, to interested copyright parties who file claims with the Copyright Office each year during January and February.

The Act provides that the royalties are to be divided into two funds—the Sound Recordings Fund, which accounts for 66⅔% of the royalties, and the Musical Works Fund, which accounts for 33⅓% of the royalties.

Within each fund, the Act establishes subfunds. The Sound Recordings Fund consists of four subfunds: the first of these—the Nonfeatured Musicians Subfund—is allocated 2⅝% of the Sound Recordings Fund, and the second subfund—the Nonfeatured Vocalists Subfund—gets a 1⅜% share. After the shares of these two subfunds are

[1] At the time of passage of the Audio Home Recording Act, the Copyright Royalty Tribunal conducted DART distribution proceedings. The Tribunal, however, was eliminated by the Copyright Royalty Tribunal Reform Act of 1993, Pub.L. No. 103–198, and the authority to distribute DART funds was given to the CARPs, as administered by the Librarian of Congress.

subtracted, two other subfunds—the Featured Recording Artist Subfund and the Sound Recording Owners Subfund—receive 40% and 60%, respectively, of the remainder. In the Musical Works Fund, there are two subfunds—the Publishers Subfund and the Writers Subfund—which each receive 50% of that Fund. Thus, the Act establishes the percentages for each fund and subfund, but directs the CARPs, through the process of a distribution proceeding, to determine what amount each claimant within a subfund is entitled to receive.

Accordingly, the Act requires the Librarian of Congress to ascertain within 30 days after the last day for filing claims—March 30—whether there are any controversies among the claimants as to the proper distribution of the royalties in their fund and/or subfund. If there are controversies, then the Librarian is directed immediately to convene a CARP or CARPs to decide the proper distribution.

## II. Consolidation of Proceedings

The first proceeding to be initiated under the new CARP system was the distribution of the 1992 and 1993 DART royalties. The 1992 DART distribution proceeding was begun by the Copyright Royalty Tribunal, but was suspended when the Tribunal was abolished and needed to be started anew. The 1993 DART distribution was begun by the Copyright Office under the new authority conferred by the Copyright Royalty Tribunal Reform Act of 1993. On March 1, 1994, the Office published a notice in the **Federal Register** seeking comment as to the existence of controversies in both the 1992 and the 1993 DART funds. 59 FR 9773 (March 1, 1994). The interested copyright parties reported that there were controversies in the Sound Recordings Fund and the Musical Works Fund for both 1992 and 1993. In addition, several of the larger claimants to both funds requested that the Office consolidate the 1992 and the 1993 DART distribution proceedings with the 1994 DART distribution proceeding and defer all consideration of DART distributions until 1995. After seeking comment on the request, the Office granted the motion to consolidate. 59 FR 35762 (July 13, 1994).

Subsequent to the consolidation of proceedings, the Copyright Office received notification from the claimants to the 1992 and 1993 Sound Recordings Fund that they had reached a settlement. On December 15, 1994, the Office issued a distribution order distributing all of the royalties in the 1992 and 1993 Sound Recordings Fund to the parties designated in the settlement agreement. *Distribution Order*, Docket No. 94–2 CARP-DD (December 15, 1994). No settlement has been reached yet for either the 1992 or the 1993 Musical Works Fund.

## III. Request for Comments and Notices of Intent To Participate

In accordance with the Copyright Office's consolidation order, 59 FR 35762, and 17 U.S.C. 1007, the Librarian of Congress and the Copyright Office are beginning distribution proceedings for the 1992 (Musical Works Fund only), 1993 (Musical Works Fund only), and 1994 (both funds) DART royalties (collectively the 1992–94 DART proceeding) by requesting that interested copyright parties comment as to the existence of controversies. Written comments are due by April 5, 1995.

To begin the distribution process for DART royalties, the pertinent regulation of the Copyright Office rules, 37 CFR 251.45(a), requires that:

> [T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a Notice of Intention to Participate.

*See* 59 FR 63041 (December 7, 1994).

A. *Negotiating settlement.* Section 251.45(a) places an affirmative duty on all claimants to DART royalties to contact each other and attempt to negotiate a settlement of their differences. The claimants to the 1992 and 1993 Sound Recordings Fund have already negotiated a settlement and have received a distribution of royalties. The 1992 and 1993 Sound Recordings Funds, therefore, are no longer a part of this DART distribution proceeding. The Musical Works Funds for 1992 and 1993, and the Sound Recordings Fund and Musical Works Fund for 1994, however, are part of this proceeding, and claimants to these funds are subject to the negotiation requirement of § 251.45(a).

The purpose of the negotiation requirement is to make all of the claimants within each fund aware of each other and to encourage active participation and open discussion between them, thereby increasing the possibility of settlements. The Copyright Office has compiled a claimant list of all interested copyright parties who timely filed a claim or claims for the 1992 and 1993 Musical Works Fund, and 1994 Musical Works and Sound Recordings Funds. The claimant lists are available from the Copyright Office at the addresses provided in this Notice, and claimants must use these lists in negotiating settlements with each other and in reporting on the existence of controversies to the royalty funds.

B. *Comments as to controversies.* In order to determine whether controversies exist for the 1992–94 DART proceeding, and consequently whether it will be necessary to convene a CARP or CARPs to distribute these royalties, we are asking the claimants to provide the Office with the following information: (a) Whether any controversies exist concerning distribution of the 1992 and 1993 Musical Works Fund, and the 1994 Musical Works and Sound Recordings Funds; (b) if controversies do exist, the particular subfunds for which they exist; and (c) if settlements have been made, the identity of all of the claimants who are covered by the settlement.

After the existence of any controversies are determined, the Audio Home Recording Act gives the Copyright Office 30 days to distribute those royalties not in controversy. In addition to the information solicited above, in order to determine the amount of royalties not in controversy, we are asking any claimants who report a controversy to state how much is in controversy in each subfund. The information provided should include each claimant's asserted percentage or dollar claim to the subfund, and a brief narrative justifying that asserted claim.

C. *Notices of Intent to Participate.* As prescribed by § 251.45(a), the Office is requesting all claimants who expect to participate in the 1992–94 DART proceeding to file a Notice of Intent to Participate with the Copyright Office. *See* 59 FR 63041. The Notice of Intent to Participate must be filed with the Office by May 5, 1995. Failure of a claimant to file a timely Notice of Intent to Participate, or to be represented by another claimant filing a timely notice, may subject the claim to dismissal. The filing of a Notice of Intent to Participate is thus critical to a claimant being able to present an effective claim.

## IV. DART Deadline

A. *DART deadline.* The Audio Home Recording Act establishes several statutory deadlines to assure the speedy distribution of DART royalties. Claims are to be filed by the last day of February, each year. The existence of controversies is to be ascertained by March 30. Distribution of royalties not

in controversy are to be authorized for distribution within 30 days of the finding that they were not in controversy—that is, no later than April 29. Prior to the passage of the Copyright Royalty Tribunal Reform Act, the Tribunal was given one year to resolve any controversies in royalty distribution after their declaration. As a result of this one year period, the Tribunal had a greater amount of time to address controversies and address issues such as discovery and collection and presentation of evidence, and this time period was reflected in the construction and operation of the Tribunal's procedural and administrative rules. However, with the passage of the CRT Reform Act, the time period for resolving controversies has been cut in half. This time reduction, along with the novel demands and requirements of the CARPs, has required the Copyright Office to adopt completely new rules and procedures for distribution of royalties and has, consequently, made the meeting of certain statutory deadlines exceedingly difficult. Nowhere is this more evident than the March 30 deadline for declaring DART distribution controversies.

The Administrative Conference of the United States has considered the issue of how agencies should respond to circumstances that affect their ability to adhere to schedule, and has issued a series of recommendations concerning statutory time limits. 43 FR 27509 (June 26, 1978), 1 CFR 305.78–3. The Administrative Conference said:

> [I]t should be recognized that special circumstances, such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations, may justify an agency's failure to act within a predetermined time. An agency's departure from the legislative timetable should be explained in current status reports to affected persons or in a report to Congress.

*Id*. at para. 4.

The Copyright Office has already faced the difficulties of meeting the March 30 deadline for declaring DART controversies and initiating arbitration. The Office postponed the deadline for the 1992 and 1993 DART royalties, prior to the consolidation of these royalties with the 1994 royalties, because it was soon after the passage of the CRT Reform Act and we had not yet implemented procedural rules for the CARPs. *See* 59 FR 9773. Although we have now adopted final procedural rules, 59 FR 63025, good cause nonetheless remains for postponing the statutory deadline of March 30, 1995, for declaring controversies and initiating arbitration for the 1992–94 DART proceeding.

An important facet of the new CARP procedural rules adopted by the Office are regulations creating a 45-day precontroversy discovery period, prior to initiating arbitration, in which claimants are directed to exchange their direct cases, make discovery requests, file their objections regarding selection of the arbitrators, and otherwise engage in precontroversy motions practice. 37 CFR 251.45. Adoption of a precontroversy discovery period was strongly urged by all of the commentators to the Office's rulemaking proceeding, *see* 59 FR 63030, and was endorsed by Representative William Hughes, Chairman of the House Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, in his statement accompanying the House version of the Copyright Royalty Tribunal Reform Act. *See* 139 Cong. Rec. H10973 (daily ed. Nov. 22, 1993)(''In order to reduce the amount of actual litigation time, and thereby reduce expenses, I encourage the Librarian to promulgate regulations permitting exchange of information before the tolling of the 180-day decision period, and, to the extent practicable, generally to permit precontroversy discovery.'').

There can be no meaningful precontroversy discovery period under the current requirement of beginning DART arbitration within 30 days of filing the claims. The 45-day precontroversy discovery period prescribed in § 251.45(a) could not take place prior to March 30, since it would overlap the period for filing claims. Shortening the period to 30 days beginning the first day after the filing of claims would reduce the benefits of precontroversy discovery enjoyed by claimants in other proceedings and deny DART claimants a period in which to negotiate settlements. Exchange of direct cases on the first day after the close of the filing period for claims is also impossible since the Office will not have had sufficient time to prepare the claimant service list, and it is highly unlikely that most claimants will be prepared to exchange their direct cases immediately after the filing period. There is, therefore, justifiable cause for postponing the March 30, 1995, date for determining controversies for the 1992–94 DART funds to permit proper and efficient operation of the Office's procedural rules.[2]

In order to assure that there is not a lengthy delay in distribution of 1992–94 DART royalties, the Office will publish the precontroversy discovery schedule in the **Federal Register** shortly after receipt of the comments on the existence of controversies. In addition to the prehearing schedule, the Office will also announce the date on which controversies will be declared, if any, and arbitration will commence.

Dated: February 23, 1995.

**Marybeth Peters,**

*Register of Copyrights.*

Approved:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 95–5329 Filed 3–3–95; 8:45 am]

BILLING CODE 1410–33–P

[2] The statutory requirement of declaring DART controversies 30 days after the close of the claims filing period is obviously a problem that will be faced annually by the Copyright Office. To correct for the inequities that this requirement poses, the Office will be seeking legislative amendment of 17 U.S.C. 1007(b) in the 104th Congress by changing the phrase ''Within 30 days after the period established for the filing of claims * * *'' to ''After the period established for the filing of claims * * *''

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–348 and 50–364]**

### Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–2 and NPF–8 issued to Southern Nuclear Operating Company (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendment would allow modifications to relocate the lower level steam generator water level taps to be made during the upcoming refueling outages for both units. These modifications affect the Technical Specifications associated with the reactor trip system and the engineered safety feature actuation system setpoints.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the

amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.9(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes to the steam generator low-low water level reactor trip and ESF actuation setpoint and to the steam generator high-high water level turbine trip and feedwater isolation setpoint do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. Several analyses previously performed in the FSAR required re-analysis. All acceptance criteria for the re-analyzed accidents continue to be met. Therefore, there is no increase in the consequences of any previously evaluated accident. The change to the steam generator low-low water level setpoint affords additional margin to spurious trips. No fission product barriers are affected. The relocation of the steam generator lower level tap does not result in increased failure probability of the SG level tap, sensing line, or instrument. Therefore, the proposed changes to the Technical Specifications do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR.

2. The proposed changes to the Technical Specifications do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failures or accident scenarios have been created or identified due to the proposed changes. All safety-related systems will continue to perform as designed. No new challenges to any installed safety systems have been created by the proposed setpoint modifications. Therefore, the possibility of a new or different accident is not created.

3. The proposed steam generator water level setpoint changes do not involve a significant reduction in the margin of safety. Some re-analysis was necessary because of the proposed setpoint changes; however, all margin associated with the current acceptance criteria continues to be unaffected. The proposed design and installation of the new level taps using the criteria of the ASME Code with inherent safety factors assure that the margin of safety in the structural integrity of the steam generator shell is not reduced. Setpoint uncertainty calculations have confirmed adequate margin exists between the assumed analysis setpoints and the revised setpoints. Therefore, there is no significant reduction in the margin of safety due to the setpoint changes or the physical modification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdenshaw Street, Post Office Box 1369, Dothan, Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide reference to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceedings, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 10, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

**Byron L. Siegel,**

*Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–5364 Filed 3–3–95; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–445 and 50–446]**

## Texas Utilities Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company (TU Electric, the licensee) for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas.

The proposed amendment would modify the Comanche Peak Steam Electric Station (CPSES) Technical Specification (TS) 3/4.6.2, ''Depressurization and Cooling Systems—Containment Spray System'' Surveillance Requirement (SR) 4.6.2.1b, is replaced with NUREG–1431 SR 3.6.6A.4. This change replaces the specific pump flow and head values now contained in the SR with the general requirement that the pump develop the required head at the flow test point. Also Bases 3/4.6.2.1 ''Containment Spray System'' will be revised to expand the detail consistent with the NUREG–1431 Bases SR 3.6.6A.4. The Bases from NUREG–1431 has minor modifications to reflect (1) that the CPSES containment spray pumps are tested via a special test line which allows testing at flows higher than that allowed by the miniflow recirculation line; (2) the ''pump design curve'' is termed the ''analytical pump curve''; and (3) the reference to the technical requirements manual where the pump head requirements are defined is provided for the user's information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The relocation of the specific values for flow and developed head at the flow test point to the Technical Requirements Manual (TRM) is essentially an administrative change. The change does not change the plant hardware or operating procedures. As such, the change has no impact on the probability of an accident.

The consequences of an accident previously evaluated, as it relates to the performance characteristics of the containment spray pumps, depends on the pumps meeting the performance characteristics in the analytical pump curve used by the containment analyses. Since the limitations established in the TRM will continue to ensure that this analytical pump curve is met, there is no impact on the

accident analyses. The initial TRM will duplicate the existing surveillance values. In the future, the TRM values may be slightly more or slightly less restrictive based on changes to the containment analyses or their design inputs. The result of this variation could be a minor variation in the consequences of an actual event were one to occur; however, the consequences would be bounded by the existing safety analyses and therefore, the change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possiblity of a new or different kind of accident from any accident previously evaluated?

The proposed change does not add new hardware to the units or change plant operations. Relocation of the surveillance acceptance criteria to the TRM cannot initiate an event nor cause an analyzed event to progress differently. Thus, the possibility of a new or different kind of accident is not created.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The margin of safety is not affected since the surveillance will continue to be required by Techincal Specifications at the same frequency and that surveillance will continue to ensure the containment spray pump performance is bounded by the analytical pump curve used in the containment analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Aministration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioners shall file a supplement to the petition to intervene which must incude a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 28, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 1st day of March 1995.

For the Nuclear Regulatory Commission.

**Timothy J. Polich,**

*Project Manager, Project Directorate IV–I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–5365 Filed 3–3–95; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–35425; File No. SR–MSTC–95–01]**

## Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Technical Corrections to Articles III & IV of the Midwest Securities Trust Company Rules

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] (''Act''), notice is hereby given that on January 18, 1995, the Midwest Securities Trust Company (''MSTC'') 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 primarily by MSTC. On January 30, 1995, MSTC amended the proposal to include an additional cross-reference correction.[2] 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

MSTC proposes the following rule change in order to make technical corrections to Section 3(ii) of Rule 1 of Article IV and to Section 2(ii) of Rule 1(B) of Article III of MSTC's rules.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposal is to make a technical revision to Section 3(ii) of Rule 1 of Article IV of MSTC's rules. On May 12, 1993, the Commission approved MSTC's pilot Same-Day Fund Settlement (''SDFS'') service.[3] The SDFS rules amended and renumbered Section 3 of Rule 1 of Article III to Sections 2 and 3 of Rule 1(B) of Article III. However, Section 3(ii) of Rule 1 of Article IV was not amended to reflect the proper cross-reference to Sections 2 and 3 of Rule 1(B) of Article III instead of Section 3(ii) of Rule 1 of Article III; this proposal makes this correction. MSTC also proposes to make a technical revision to Section 2(ii) of Rule 1(B) of Article III of MSTC's rules to reflect the proper cross-reference to Section 1 of Rule 1(B) of Article III instead of Section 1 of Rule 1 of Article III.

MSTC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because clarifying MSTC's rules will facilitate the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that the proposed rule change will have an impact on or impose a 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 have been solicited or received. MSTC will notify the Commission of any written comments received by MSTC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [4] of the Act and pursuant to Rule 19b–4(e)(4) [5] promulgated thereunder in that the proposal effects a change in an existing service that does

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (January 30, 1995).

[3] For a complete description of MSTC's pilot SDFS service, refer to Securities Exchange Act Release No. 32300 (May 12, 1993), 58 FR 29438 [File No. SR–MSTC–90–8] (order approving a pilot SDFS service).

[4] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[5] 17 CFR 240.19b–4(e)(4) (1994).

not adversely affect the safeguarding of securities or funds in MSTC's custody or control and does not significantly affect the respective rights or obligations of MSTC or persons using MSTC's services. At any time within sixty days of the filing of such 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 NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–01 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5373 Filed 3–3–95; 8:45 am]

**BILLING CODE 8010–01–M**

[6] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–35424; File No. SR–MSTC–94–21]**

## Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change Seeking To Establish an Automated Program for the Transfer of Certain Securities Between the Midwest Securities Trust Company and Transfer Agents

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 28, 1994, the Midwest Securities Trust Company (''MSTC'') 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 primarily by MSTC. 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

MSTC proposes to establish an automated program, to be known as ATS, for the transfer of certain securities between MSTC and transfer agents.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change*

The proposed rule change seeks to establish an automated program for the transfer of securities between MSTC and transfer agents. Under MSTC's proposed program, MSTC and the transfer agents participating in the program will use a master balance certificate[2] to evidence the number of securities of a particular issue registered in MSTC's nominee name and transferred into or out of MSTC through the transfer agents. The transfer agents will have custody of the securities in the form of balance certificates registered in MSTC's nominee name. The balance certificates will be adjusted daily to reflect MSTC's withdrawal and deposit activity.

Currently, if a participant requests the withdrawal of one hundred shares of a security from MSTC, MSTC will send a written instruction to the transfer agent followed by a physical surrender of the shares to the transfer agent. The transfer agent will reissue the shares in the requested name and will send the shares back to MSTC. Using the ATS program, an electronic instruction will immediately effectuate the withdrawal transfer thus eliminating the extra step of physically surrendering the security from MSTC to the transfer agent.

For issues eligible for ATS, MSTC will deliver to participating transfer agents nominee and/or non-nominee certificates[3] for each issue. The transfer agent will cancel the certificates delivered and issue one or more balance certificates per issue. The transfer agent will retain possession of the balance certificates and hold them in a secured area at all times.

In its normal course of business, MSTC will continue to deliver to participating transfer agents nominee certificates and/or non-nominee certificates with the instructions to register the transfer of the non-nominee certificates into the account of Kray & Co. MSTC also will instruct the transfer agent to include the securities evidenced by the nominee and/or non-nominee certificates in the balance certificate for the issue represented by such balance certificate. MSTC also may issue instructions to the transfer agent to register the transfer of all or some of the securities evidenced by a balance certificate to a name other than Kray & Co. or to issue a certificate to a name other than Kray & Co. The transfer agent will increase or decrease the number of securities evidenced by the balance certificate so that at the end of each day the balance certificate will evidence the number of securities equal to the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For the purpose of the ATS program, ''balance certificates'' shall mean a certificate registered in the name Kray & Co., which is MSTC's nominee name, which evidences (1) record ownership by Kray & Co. of the number of shares or units of the issue shown from time to time on the records of the issuer thereof or (2) the duties of the issuer thereof to perform the obligations shown from time to time on the records of the issuer thereof, which records are maintained by a transfer agent, as being evidenced by such certificate, which certificate shall be retained by a transfer agent.

[3] For the purpose of the ATS program, the term ''nominee certificates'' shall mean a certificate of an issue registered in the name of Kray & Co. The term ''non-nominee certificate'' shall mean a certificate of an issue registered in a name other than Kray & Co.

previous balance plus any securities received from MSTC to be registered in the name Kray & Co. minus any transfers and issuance of certificates in a name other than Kray & Co. The transfer agent will confirm in writing, on a daily or other periodic basis as MSTC may reasonably request, the number of securities evidenced by each balance certificate.

The obligations of the ATS transfer agents and MSTC will be set forth in a Balance Certificate Agreement (''Agreement'') executed by each ATS transfer agent and MSTC.[4] The Agreement provides that all shares or units or the amount of any obligations evidenced by the balance certificate which come into possession of the transfer agent pursuant to ATS will be the sole property of MSTC. The transfer agent will not obtain any legal or equitable right, title, or interest in or to such securities evidenced by the balance certificates.

The Agreement also provides that upon request from MSTC, the transfer agent will be obligated to deliver, within twenty-four hours, all securities evidenced by a balanced certificate. If the transfer agent determines that any security held by it is lost, destroyed, stolen, or otherwise unaccounted for, the transfer agent must notify MSTC immediately and issue a replacement certificate.

The Agreement provides that the transfer agent must maintain an insurance policy in the form of a customary banker's blanket bond to cover any securities received from MSTC or held by the transfer agent pursuant to ATS. The bond must be in the maximum amount of one hundred million dollars. The Agreement further states that the transfer agent must provide annually to MSTC's satisfaction evidence that such blanket bond or comparable plan of insurance is in full effect.[5] When the transfer agent is responsible for the shipment of securities, the Agreement requires that the transfer agent provides adequate insurance coverage or require coverage from the carrier to cover losses that occur while in transit to and until received by MSTC. The amount of coverage must be equal to or exceed 110% of the fair market value of the securities shipped. The transfer agent is not obligated to delivery shares evidenced by balance certificates within twenty four hours of such a request from MSTC if the aggregate value of the shares to be delivered exceeds the amount of the bankers blanket bond. The transfer agent will instead deliver or make available the certificates as promptly as possible.[6]

Instructions from MSTC to register the transfer of securities evidenced by a balance certificate in a name other than Kray & Co. will constitute a presentation of the balance certificate to the transfer agent under applicable law. The same warranties that would apply if MSTC physically presented the balance certificate to the transfer agent will be applicable in this instance.

MSTC believes the proposed rule change is consistent with section 17A(b)(3)(A) of the Act[7] in that it enhances MSTC's ability to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.

MSTC also believes the rule change will further MSTC's goal of minimizing the exposure of securities to loss in transit between MSTC and transfer agents. The program will eliminate needless movement of securities. Under ATS, securities will be maintained in a form that will no longer permit the ready negotiation of the securities in the event of theft.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that the proposed rule change will impose an inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it find such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MSTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change would be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–94–21 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5374 Filed 3–3–95; 8:45 am]

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[4] If a transfer agent employs a processor to perform the transfer agent's duties in ATS, the transfer agent and processor must enter into a separate agreement obligating the processor to perform the duties described in the Agreement. The transfer agent must notify MSTC if there is any material changed to the terms of the agreement between the transfer agent and processor, if there is a termination or anticipated termination of the agreement, or if there is a breach of the agreement or an event that will affect or might reasonably be expected to affect the processor's ability to perform any of its obligations under the agreement. MSTC only will permit a transfer agent to employ a processor as its agent if the transfer agent represents and warrants that it will bear any and all liability and responsibility for all securities held by, all actions taken by, and all obligations assigned to the processor with the same force and effect as if the securities were held by, the actions were taken by, or the obligations were those of the transfer agent.

[5] The transfer agent may limit, decrease, or cancel the blanket bond protection upon thirty days prior notice of such action to MSTC.

[6] Before delivering the MSTC certificates with an aggregate current market value in excess of the maximum amount of the blanket bond, the transfer agent may not create or maintain certificates, other than any balance certificate, having a value in excess of the blanket bond.

[7] 15 U.S.C. 78q–1(b)(3)(A) (1988).

[8] 17 CFR 200.20–3(a)(12) (1994).

**[Release No. 34–35423; File No. SR–NSCC–95–01]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Expanding the Types of Payments Processed Through the Mutual Fund Networking Service

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] (''Act''), notice is hereby given that on January 10, 1995, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. 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

NSCC proposes to modify its Mutual Fund Networking Service rules to permit settlement of additional payments pertaining to mutual fund activity.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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 statement may be examined at the places specified in Item IV below. NSCC 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*

NSCC's Mutual Fund Networking Service currently enables Networking participants to transmit mutual fund customer account data among NSCC's broker-dealer and mutual fund processing members [2] and to settle mutual fund dividend payments.[3] The proposed rule change will modify the Mutual Fund Networking Service to permit settlement of other payments pertaining to mutual fund activity in addition to dividend payments.[4] NSCC currently proposes to allow Networking participants to settle payments which result from standing instructions (*e.g.*, monthly) given by a customer to a mutual fund to liquidate a certain amount or value of shares or specific instructions given by a customer directly to a mutual fund to liquidate shares.[5] The proposed rule modifies the existing Mutual Fund Networking Service to better meet the needs of NSCC's Networking participants by expanding the standardization of money payments on an automated basis.

NSCC believes the proposed rule change is consistent with the requirements of the Act, and specifically Section 17A of the Act, and the rules and regulations thereunder, because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [6] of the Act and pursuant to Rule 19b–4(e)(4) [7] promulgated thereunder, in that the proposal effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in NSCC's custody or control and does not significantly affect the respective rights or obligations of NSCC or persons using NSCC's services. At any time within sixty days of the filing of such 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 purpose 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 NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–95–01 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5372 Filed 3–3–95; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Investment Company Act Rel. No. 20925/ International Rel. No. 788 812–8970]**

## Enersis S.A.; Notice of Application

February 27, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

**APPLICANT:** Enersis S.A.

**RELEVANT ACT SECTION:** Section 2(a)(9).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it controls

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a detailed description of NSCC's Networking Service, refer to Securities Exchange Act Release No. 26376 (December 28, 1988), 53 FR 52544 [File No. SR–NSCC–88–08] (order granting approval to NSCC's Networking Service).

[3] Securities Exchange Act Release No. 28608 (November 19, 1990), 55 FR 48193 [File No. NSCC–89–13] (order granting permanent approval to NSCC's automated settlement of mutual fund dividends).

[4] Payments made through the Networking Service are not guaranteed by NSCC; therefore, NSCC reserves the right to reverse any credit in the event NSCC does not receive a corresponding payment from a Fund member.

[5] NSCC will be required to file a proposed rule change pursuant to Section 19(b) of the Act before allowing other types of payments to be processed through the Networking service.

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b–4(e)(4) (1994).

[8] 17 CFR 200.30–3(a)(12) (1994).

Empresa Nacional de Electricidad S.A. (''Endesa''), notwithstanding that it owns less than 25% of its voting securities.

**FILING DATE:** The application was filed on April 28, 1994 and amended on July 8, 1994 and October 6, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Santo Domingo 789, Santiago, Chile.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, at (202) 942–0570, or Barry Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

## Applicant's Representations

1. Applicant is a Chilean holding company primarily engaged through its majority-owned subsidiaries and related companies in the utility business. Applicant is not registered under the Investment Company Act by virtue of its reliance on rule 3a–1.[1]

2. Endesa is a Chilean electric generation company, Applicant owns directly and indirectly approximately 17% of Endesa and is Endesa's largest shareholder. Four of the five remaining largest shareholders of Endesa are entities comparable to United States pension funds. Under Chilean law, the amount one of these entities can invest in a company similar to Endesa is the lesser of 7% of its assets or 7% of Endesa's equity. The fifth large shareholder of Endesa is a company owning approximately 3.4% of Endesa's shareholder equity. Applicant, therefore, owns more than twice as many shares as the next largest shareholder.

3. Three of Endesa's nine member board are Enersis officers or directors. Enersis's equity ownership gives it the power to elect two of Endesa's directors; a third Enersis official on Endesa's board publicly campaigned for the position. These persons also hold the positions of Enersis's Chairman of the Board, its Chief Executive Officer, and its Director of Planning and Development. Applicant's Chief Executive Officer is the Chairman of the board of Endesa. The Chairman is entitled to cast a second vote in the event of a tie of Endesa's board of directors, thereby giving Enersis an additional vote.

4. Enersis, previously a government-owned utility, was privatized in 1987 and restructured to become a holding company. Since its privatization, all of Enersis's stock acquisitions have been of utility businesses. Enersis's strategy has been to concentrate its activities on its core utility business and to take stock positions in other entities only under circumstances where it is the dominant shareholder or where it and Endesa together are the dominant shareholders of the entity whose stock is being acquired.

5. Jose Yuraszeck, Enersis's Chief Executive Officer, became Endesa's Chairman in April 1992. He is commonly referred to as the ''Electricity Czar'' in Chile and is identified by the public as personifying Endesa.[2] Mr. Yuraszeck is also Chairman of Endesa's subsidiary formed to build, own, and mange Endesa's major power plant development.

6. Endesa's Director of Planning and Development was assigned to Endesa at Enersis's direction and the planning and development staffs of Enersis and Endesa have collaborated on various projects.

## Applicant's Legal Analysis

1. Section 2(a)(9) defines ''control'' as ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.'' Section 2(a)(9) also creates a presumption that owners of more than 25% of a company's voting securities control such company, and the owners of 25% or less of a company's voting securities do not control such company. A securityholder may obtain an SEC order rebutting either presumption by producing evidence to the contrary.

2. Applicant seeks an order of the SEC declaring that it controls Endesa, notwithstanding the presumption under the Act that ownership of less than 25% of a company's voting securities is insufficient to establish control.[3]

3. Applicant argues that the facts set forth in the application are sufficient to support a finding that applicant controls Endesa. Applicant holds the largest share of Endesa's voting securities and has significant representation on Endesa's board of directors.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5334 Filed 3–3–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 3a–1 provides that an issuer meeting the statutory definition of an investment company is not an investment company if: (a) no more than 45% of the value of its total assets (exclusive or government securities and cash items) consists of securities other than government securities, securities issued by employee securities companies, securities of certain majority-owned subsidiaries, and securities issued by companies under the primary control of the issuer that are not investment companies; and (b) no more than 45% of its income after taxes (over the last four fiscal quarters combined) is received from such securities.

[2] ''Electricity Czar,'' Que Pasa, May 1992.

[3] Any order concerning the application will be limited to determining whether Enersis controls Endesa under section 2(a)(9). Enersis is not seeking any determination as to whether it ''primarily'' controls Endesa for purposes of rule 3a–1 or whether applicant falls within the definition of investment company under the Act.

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**[Release No. IC–20926; File No. 812–9230]**

## The Equitable Life Assurance Society of the United States, et al.

February 27, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'' or the ''Commission'').

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

**APPLICANTS:** The Equitable Life Assurance Society of the United States (''Equitable''), Separate Account No. 45 of Equitable (the ''Account''), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by equitable (''Other Account''), and Equitable Capital Securities Corporation (''ECCS'').

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the deduction of: (i) a mortality and expense risk charge from the assets of the Account in

connection with the offering of certain deferred variable annuity contracts and certificates (collectively, the ''Account Contracts'') issued by Equitable through the Account; (ii) a guaranteed minimum death benefit charge from a contract owner's account value; and (iii) a contribution-based distribution fee from a contract owner's account value. Applicants also seek an order to permit the deduction of a mortality and expense risk charge, guaranteed minimum death benefit charge and contribution-based distribution fee from the assets of, and account values held in, the Account and of any Other Account in connection with the offering in the future of deferred variable annuity contracts (the ''Other Contracts'') which are substantially similar in all material respect to the Account Contracts and are issued by Equitable through the Account or any Other Account.

**FILING DATE:** The Application was filed on September 16, 1994, and amended and restated on January 6, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 24, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 787 Seventh Avenue, Area 36–K, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Attorney, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete application is available for a fee from the Public Reference Branch of the Commission.

## Applicants' Representations

1. Equitable is a stock life insurance company organized under the laws of the State of New York. Equitable serves as depositor of the Account. Equitable may establish one or more Other Accounts in the future, for which it will serve as depositor.

2. The Account was established on August 15, 1994, as a segregated asset account of Equitable. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are credited to or charged against the Account without regard to other income, gains or losses of Equitable. The Account is registered with the Commission as a unit investment trust series investment company under the 1940 Act. The Account will fund the variable benefits available under the Account Contracts. Units of interest in the Account under the Account Contracts will be registered under the Securities Act of 1933. In the future, Equitable may issue Other Contracts through the Account or Other Accounts.

3. The Account Contracts consist of a basic form of group annuity contract (the ''Group Contract''), a basic form of certificate (''Certificate'') issued under the Group Contract, and forms of Certificate endorsements (''Endorsements'') to be used for specific benefits under the Certificates. Certificates may be issued as individual contracts in certain states.

4. The Account Contracts will be offered in the tax-qualified retirement plan (''Plan'') market and in non-qualified (''NQ'') markets. The Account Contracts initially will be offered in the rollover individual retirement annuity (''IRA'') Plan market and in NQ markets. In both the IRA Plan and NQ markets, the initial contribution must be at least $10,000; under IRA Certificates, that initial payment may come in the form of a minimum rollover contribution or direct transfer from another individual retirement arrangement. In both IRA Plan and NQ markets, additional contributions must be at least $1,000.

5. Different minimum contribution amounts may be established for other Plan markets. Lower minimum amounts may be established for automatic investment programs. Maximum limitations on contributions also may be imposed. Contributions under the Certificates may be accumulated before annuitization, and annuity payments may be received after annuitization, on a variable basis. Annuity payments also may be received on a fixed basis.

6. Under an Endorsement, the Certificates permit contributions to be allocated to guarantee periods expiring on specified dates. The guarantee periods will be funded through a ''non-unitized'' separate account established by Equitable; assets in such ''non-unitized'' separate account will be subject to the claims of Equitable's general creditors. Each guarantee period will provide a guarantee of the contribution allocated thereto and interest, which guarantee is supported by Equitable's general accounts assets, including those allocated to the ''non-unitized'' separate account. An upward or downward adjustment—a ''market value adjustment (''MVA'')''—will be made to the Annuity Account Value [1] in a guarantee period upon a withdrawal, surrender or transfer from a guarantee period before its expiration. Death benefit amounts based on Annuity Account Value in a guarantee period only will reflect any upward MVA.

7. Under an Endorsement, the Certificates may include a life contingent annuity option funded through Equitable's general account. The life contingent annuity provides guaranteed periodic fixed annuity benefits, generally commencing at later ages, for the life of the annuitant or a survivor annuitant. This form of benefit will be offered for use in conjunction with certain reallocations and withdrawal arrangements to be made available by Equitable.

8. The Account currently is subdivided into nine subaccounts (''Investment Funds''), each of which will be available under the Certificates. Each Investment Fund will invest in the shares of a corresponding portfolio (''Portfolio'') of The Hudson River Trust (the ''Trust''). The Trust is an open-end, diversified ''series'' management investment company, registered under the 1940 Act.

9. In the future, Equitable may create additional Investment Funds of the Account to invest in any additional Portfolios, or other such underlying portfolios or other investments as may now or in the future be available. Investment Funds also may be combined or eliminated from time to time.

10. ECSC is an indirect wholly-owned subsidiary of Equitable, and will be the principal underwriter of the Account and the distributor of the Account Contracts. ECSC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''), and is a member of the National Association of Securities Dealers, Inc. (the ''NASD''). The Certificates will be offered through representatives of ECSC and its affiliates, as well as through unaffiliated broker-dealers who have entered into agreements with ECSC. All of such

[1] A contract owner's ''Annuity Account Value'' is the sum of the amounts held for the owner in the ''Investment Options'' under the Account Contracts. The ''Investment Options'' include the variable investment options and each guarantee period account available through the Account Contracts.

affiliates and unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members.

11. ECSC or any successor entity may act as principal underwriter for any Other Account and as distributor for any Other Contracts. A successor entity also may act as principal underwriter for the Account.

12. The charges and fees described below are the maximum that may be imposed under the Certificates. The amount of the applicable charges and fees, as set forth in the Certificates and relevant offering prospectuses, may not be increased during the life of the Certificate without the owner's consent. Equitable may reserve the right to impose transfer charges not otherwise applicable when the Certificate is issued, subject to the maximum amounts described below.

13. Equitable proposes to deduct a daily asset charge from the Account for assuming mortality and expense risks. Equitable assumes a mortality risk by its contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity options involving life contingencies, regardless of the annuitant's own longevity or an improvement in life expectancy generally. Equitable assumes the risk that annuitants as a group will live longer than Equitable's annuity tables predict, which would require Equitable to pay out more in annuity income than it planned.

14. Equitable will assume an expense risk under the Certificates to the extent that the administrative charges applicable under the Certificates—including the annual contract fee, the asset-based administrative charge, the withdrawal processing charge, and the transfer charges—may be insufficient to cover actual administrative expenses.

15. As compensation for assuming mortality and expense risks, Equitable will assess a daily charge, equal on an annual basis to 0.90% of the assets of each Investment Fund of the Account. Approximately 0.60% of the charge is for assumption of mortality risks, and approximately 0.30% is for assumption of expense risks. (Equitable reserves the right to revise the percentages so allocated.)

16. The Certificates provide for a death benefit which is the sum of (a) the Annuity Account Value or, if greater, the ''guaranteed minimum death benefit, '' and (b) the death benefit provided in an Endorsement (including a ''Market Value Adjustment Terms Endorsement'' proposed to offered by Equitable).

17. On the Contract Date,[2] the guaranteed minimum death benefit applicable to Certificates issued in all states except New York will equal the portion of the initial contribution allocated to the Account. Thereafter (except as adjusted at the end of the seventh Contract year), the guaranteed minimum death benefit will equal (i) the prior guaranteed minimum death benefit, (ii) plus any subsequent contributions to and transfers into the Account, (iii) less any transfers out of, and any withdrawals from, the Account, (iv) plus interest credited on each Processing Date.[3] At the end of the seventh Contract year, the guaranteed minimum death benefit will be set at the then current guaranteed minimum death benefit or, if greater, the current Annuity Account Value in the Account.

18. Interest for the guaranteed minimum death benefit calculation under NQ Certificates will be credited at rates determined by the annuitant's ''issue age'' (the annuitant's age at issue of the Certificate)—6% for issue ages 0 through 69, 3% for issue ages 70 through 74, and 0% for issue ages 75 and older. For amounts in the money market Investment Fund, the rate will be based on the lesser of those guaranteed minimum death benefit interest rates and the actual rate of return.

19. Under IRA Certificates, interest will be credited at the applicable effective annual guaranteed minimum death benefit interest rate for an ''attained age'' (the owner's age at issue of the Certificate plus the number of Contract years that have elapsed since the Contract Date)—6% for attained ages 0 through 70, and 0% for attained ages 71 through 85. For amounts in the money market Investment Fund, the rate will be based on the lesser of those guaranteed minimum death benefit interest rates and the actual rate of return.

20. For Certificates sold in New York, the guaranteed minimum death benefit is calculated on a basis different from that for Certificates sold in all other states, but will not be less than (i) the initial and any subsequent contributions and transfers into the Account, (ii) less any transfers out of, and any withdrawals from, the Account, (iii) plus interest credited on each Processing Date in the same manner as under Certificates sold in all other states.

21. Equitable will impose a charge for providing the guaranteed minimum death benefit and assuming related mortality risks. The charge will not be asset-based, but will be based on the amount of the guaranteed minimum death benefit, and will compensate Equitable for the risk that the annuitant may die at a time when the cash value of the Account is less than the amount of the guaranteed minimum death benefit. Because the Certificates do not impose any withdrawal charge on the payment of a death benefit, Equitable assumes the risk that the owner will die at a time when the withdrawal charge would otherwise have been applicable. Equitable also will assume the risk that, at the time of death, the Annuity Account Value will not have increased by at least the amount of interest credited to contributions in determining the amount of the guaranteed minimum death benefit.

22. The maximum guaranteed minimum death benefit charge is 0.35% of the amount of the guaranteed minimum death benefit as of each Processing Date. The applicable charge will be deducted from the Annuity Account Value held in the Investment Funds on each Processing Date, and will be the same for all Certificates.

23. No sales charges will be deducted at the time contributions are applied under a Certificate. A distribution fee, or sales load, equal to a maximum of 1.00% of the amount of each contribution made, and not withdrawn, may be deducted from the Annuity Account Value held in the Investment Funds annually on each of the seven Processing Dates following the receipt by Equitable of each contribution. The distribution fee, if any, will be deducted from the Investment Funds on a pro-rata basis, unless the Certificate owner specifies otherwise. If, at any time before the seventh Processing Date, the Certificate owner surrenders the Certificate for its cash value (*i.e.*, the Annuity Account Value less any applicable charges) or annuitizes, the Certificate is terminated, or a death benefit is payable, no further distribution fee deductions will be made. If a partial withdrawal is taken before the seventh Processing Date, the distribution fee will be applied only to the remaining amount of the contribution. The distribution fee and the withdrawal charge (described below) combined will never exceed the amount of the maximum withdrawal charge. Any amounts realized from the distribution fee will be used to defray a portion of the sales expenses.

[2] The ''Contract Date'' is the date on which an annuitant is enrolled under a Group Contract, or the effective date of an individual contract form of Account Contract in states requiring individual contracts.

[3] The ''Processing Date'' is each anniversary of the Contract Date, but may occur quarterly.

24. Depending upon the distribution channels used and other factors affecting marketing costs, Equitable may offer Certificates at distribution fee levels below 1.00%, or without a distribution fee. In addition, Equitable may increase the number of Processing Dates over which the distribution fee may be imposed.

25. A withdrawal charge will be imposed upon a surrender of a Certificate, upon annuitization, or upon any partial withdrawal. The charge will apply to amounts in excess of a ''free corridor amount'' and will be deducted from the Annuity Account Value held in the Investment Funds from which the withdrawal is made. The withdrawal charge is a percentage of each contribution received by Equitable, and depends on the Contract year in which the Certificate is surrendered, or a partial withdrawal is taken. The maximum withdrawal charge during the first Contract year—*i.e.*, when Equitable receives the contribution—is 7% and declines by 1% each Contract year thereafter to zero in the eighth and subsequent Contract years.

26. A ''free corridor amount'' equal to 15% of the Annuity Account Value under a Certificate at the beginning of the Contract year, less prior withdrawals made in that Contract year, may be withdrawn during that Contract year without being subject to the withdrawal charge. The ''free corridor amount'' is not applicable upon the surrender of a Certificate.

27. When computing the withdrawal charge, amounts shall be considered withdrawn on a ''first-in, first-out'' basis. The withdrawal charge is not applicable upon the payment of any death benefit. The amounts obtained from the withdrawal charge, together with the distribution fee, will be used to help defray expenses incurred in the sale of Certificates. The withdrawal charges will not exceed the percentages discussed above. Based on marketing considerations, Equitable may reduce the percentages charged or increase the number of Contract years over which the charges are imposed. During the life of the Certificate, the schedule of withdrawal charges shown in a Certificate will not be increased, nor will the charge period be abbreviated.

28. The administrative charges which may be assessed under the Certificates include: a maximum annual contract fee, equal to the greater of 0.15% of the amount of each contribution made and $30 per Contract Year, which is incurred by the Certificate owner at the beginning of each Contract Year and deducted annually on each Processing Date; and a daily asset-based administrative charge, at a maximum annual rate of 0.25%, assessed against the Investment Funds. Unless the Certificate owner directs otherwise, the annual contract fee will be deducted pro-rata from amounts held in the Investment Funds. The annual contract fee may be inapplicable if the total contributions received under a Certificate exceed specified amounts.

29. The administrative charges also include a charge, equal to the lesser of $25 or 2% of the amount withdrawn, for processing each partial withdrawal (other than withdrawals under certain flexible payment distribution options) after the first in a Contract year. This charge will be deducted pro-rata from the Investment Funds from which each withdrawal is made. This charge does not apply upon the surrender of a Certificate.

30. The Certificates provide for five free transfers during a Contract year. For each additional transfer in excess of the free transfers, Equitable may charge $25 at the time the transfer is processed. The charge will be deducted pro-rata from the Investment Funds from which the transfer is made. Equitable also may deduct a $25 transfer charge for a direct transfer to a third party of amounts under the Certificate, or for an exchange for the contract of another insurance carrier.

31. Equitable expects that, over the period that the Certificates are in force, the revenues from the administrative charges—including the annual contract fee, the daily asset-based administrative charge, the withdrawal processing charge, and the transfer charges—will not exceed its total expected costs of administering the Certificates, on average, excluding costs that are properly categorized as distribution expenses. Applicants represent that these administrative charges will be deducted in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

32. Unless the Certificate owner specifies otherwise, charges for premium taxes generally are deducted from the Annuity Account Value in the Investment Funds upon annuitization. Under Certificates sold in certain states, however, a deduction for premium taxes is made from the Annuity Account Value in the Investment Funds at the time the contribution is received. Whether premium taxes are applicable depends on the owner's current place of residence; such taxes generally range from 0% to 5% of contributions or the amount annuitized, as appropriate. Equitable represents that the amount that it will recover for premium taxes will not exceed the amount of premium taxes required to be paid.[4]

33. Applicants represent that if the mortality and expense risk charge and the guaranteed minimum death benefit charge are insufficient to cover the expenses and costs assumed, the loss will be borne by Equitable; if the amounts deducted prove more than sufficient, the excess will be profit to Equitable. Equitable expects to earn a profit over the expected life of the Certificates from the mortality and expense risk and the guaranteed minimum death benefit charges. If the distribution fee and withdrawal charge are insufficient to cover the actual costs of distribution, the expenses will be paid from Equitable's general account assets, which will include any profit derived from the mortality and expense risk and the guaranteed minimum death benefit charges.

**Applicants' Legal Analysis**

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the assessment of a mortality and expense risk charge, a guaranteed minimum death benefit charge, and a distribution fee under the Account Contracts and Other Contracts.

2. Section 6(c) of the 1940 Act provides, in relevant part, that the Commission may issue an order exempting any person, security or transaction, or any class or classes thereof, from any provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants believe that the terms of the relief requested with respect to any Other Contracts funded by the Account or any Other Account are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants undertake that the Other Contracts funded by the Account or any Other Account will be substantially similar in all material respects to the Account Contracts. Applicants state that without the requested relief Applicants would have to request and obtain exemptive relief in connection with Other Contracts and/or Other Accounts. Any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this Application.

[4] Equitable represents that, to the extent necessary, it will assess charges for premium taxes in reliance upon Rule 26a–2(d) under the 1940 Act.

4. Applicants submit that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Equitable to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Equitable's ability to effectively take advantage of business opportunities as they arise.

5. Applicants submit that the reasons cited above also explain why the requested relief is consistent with the purposes of the 1940 Act and the protection of investors. In this regard, Applicants submit that investors would not receive any benefit or additional protection if Equitable were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application. Indeed, investors might be disadvantaged as a result of Equitable's increased overhead expenses.

6. Section 2(a)(35) defines ''sales load'' as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

7. The literal wording of Section 2(a)(35) contemplates a front-end sales charge. Although Rule 6c–8 permits the deduction of a contingent deferred sales load, such as the withdrawal charge provided for in the Certificates, that rule is not available for the periodic deduction of a contribution-based deferred distribution fee. Applicants, therefore, request an exemption from Section 2(a)(35) to the extent necessary to permit the assessment of a contribution-based deferred distribution fee under the Accounts.

8. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require, among other things, that all payments received under a periodic payment plan certificate sold by a registered unit investment trust, any depositor thereof or underwriter therefor, be held by a qualified bank as trustee or custodian, under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

9. Applicants submit that because the distribution fee is designed to compensate for sales related expenses, not bookkeeping or other administrative services, it could be argued that Section 26(a)(2)(C) precludes the deduction of the distribution fee from the Annuity Account Value in the Account. Applicants also submit that Section 27(c)(2) may be construed to prohibit a registered investment company or a depositor or underwriter for such a company from selling any periodic payment plan certificate (such as the Certificates) unless the proceeds of all the payments under such a certificate are held by a trustee or custodian under an agreement containing the substance of the provisions of Section 26(a)(2). For this reason, Applicants state that it could be argued that the Account, by virtue of the deduction of the distribution fee, does not meet the requirements of Section 26(a)(2)(C) and, therefore, the sale of the Certificates violates Section 27(c)(2). Accordingly, Applicants request exemption from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of the distribution fee in the manner described in this Application.

10. Applicants submit that the imposition of a sales load in the form of a contribution-based charge that is deducted over an extended period is more favorable to Certificate owners than the deduction of the equivalent charge as a front-end sales load (as contemplated by Section 2(a)(35)). In this regard, Applicants note that the full amount of a contribution is available for investment in the Account, thereby providing each Certificate owner with more investment dollars than if an equivalent front-end sales charge were deducted from the contribution.

11. Applicants also state that deferring a sales charge can benefit Certificate owners by permitting them to receive any positive investment experience on the portion of the charge that is deferred. Applicants further state that, because the distribution fee is not deducted from death benefit proceeds, deducting the distribution fee over time, rather than at issue of the Certificate, can favorably affect the amount of the death benefit payable if death occurs during the first seven Contract years. Applicants also state that the total amount charged to a Certificate owner when the distribution fee is deducted over time is no greater than the amount that would be charged if the distribution fee were deducted from the contribution as a front-end sales load.

12. Applicants state that the Commission previously has promulgated regulations permitting the deduction of sales charges from cash value, but only in connection with variable life insurance policies pursuant to Rule 6e–3(T) under the 1940 Act. Applicants submit that the reasoning that justifies the exemptions provided by that rule in connection with variable life insurance policies also justifies exemptive relief in this instance.

13. Applicants represent that the distribution fee may not exceed 7% of the contribution made, and the total sales load will never be more than the maximum withdrawal charge of 7%. In this regard, Applicants assert that if a Certificate owner does not withdraw a contribution in the seven-year period after the contribution is made, no withdrawal charge will be applicable, but the 1% maximum distribution fee will be imposed on each Processing Date, for a maximum total of 7% of the contribution made. Applicants further assert that if a partial withdrawal of a contribution is made during that seven-year period, the amount withdrawn will be subject to a withdrawal charge, but will no longer be part of the contribution base upon which the distribution fee is assessed on a Processing Date. That is, the amount withdrawn would not be subject to any further distribution fee, and the balance of the contribution would not be subject to a withdrawal charge, but would be charged a distribution fee on the Processing Date. Accordingly, Applicants represent that, as the withdrawal charge is reduced 1% in each of the years following the year in which the contribution is made, and the distribution fee only applies to the remaining amount of a contribution after a withdrawal, the sum of the distribution fee and the withdrawal charge (as applicable) will never exceed 7% of the contribution made. Applicants also represent that the sum of the distribution fee and the withdrawal charge (as applicable) always will be lower than the 9% maximum permitted by Rule 6c–8 and the provisions of Section 27(a)(1) of the 1940 Act regarding maximum sales loads for variable insurance products or periodic payments plan certificates.

14. Applicants assert that the maximum guaranteed minimum death benefit charge is reasonable in relation to the risk assumed by Equitable under the Certificates. In arriving at this determination, Equitable states that it conducted a large number of trials at different issue ages to determine the expected cost of the guaranteed minimum death benefit. By analyzing

the results of a statistically valid number of such simulations, Equitable was able to determine actuarially the level cost of providing the benefit. Based on this analysis, Equitable determined that the 0.35% charge was a reasonable charge for providing the guaranteed minimum death benefit under the Certificates. Equitable undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making that determination.

15. Applicants represent that the aggregate mortality and expense risk and guaranteed minimum death benefit charges under the Certificates are reasonable in relation to the risks by Equitable under the Certificates, and reasonable in amount as determined by industry practice for comparable contracts. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk and guaranteed minimum death benefit charges under comparable variable annuity contracts currently being offered in the insurance industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees, and the markets in which the Certificate will be offered. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying the foregoing representations.

16. Equitable will assess a mortality and expense risk charge not to exceed an annual rate of 0.90%, and a maximum annual charge of 0.35% of the guaranteed minimum death benefit. Assuming a hypothetical gross investment return in the Account of 5.0%, the 0.35% maximum guaranteed minimum death benefit charge would, if expressed as a daily charge against Account assets, add approximately 0.35% to the 0.90% mortality and expense risk charge, for a total charge, on an annual basis, of approximately 1.25% of the assets in the Investment Funds.

17. For higher hypothetical gross returns, the guaranteed minimum death benefit charge, when expressed as an asset-based charge, would be less; for lower hypothetical gross returns, it would be more. Applicants assert that this is because the charge base—which is essentially contributions plus interest—is a relative constant in dollar amount compared to the fluctuating values of an Investment Fund. Thus, as a percentage of the assets of an Investment Fund, which (assets) change with investment performance, positive performance results in a reduction of the guaranteed minimum death benefit charge when expressed as an asset-based charge; negative performance will result in an increase in the guaranteed minimum death charge when expressed as an asset-based charge.

18. Applicants acknowledge that the withdrawal charge and distribution fee, as applicable, may be insufficient to cover all costs relating to the distribution of the Certificates. Applicants further acknowledge that if a profit is realized from the mortality and expense risk and guaranteed minimum death benefit charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge and distribution fee. In such circumstances, a portion of such charges might be viewed as providing for costs relating to distribution of the Certificates.

19. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Certificates will benefit the Account and Certificate owners and annuitants. Equitable represents that it will maintain at its principal office, and make available on request to the Commission, a memorandum setting forth the basis for such conclusion.

20. Equitable represents that the Account will invest only in an underlying mutual fund which has undertaken to have a board of directors, a majority of the members of which are not ''interested persons'' of such fund within the meaning of Section 2(a)(19) of the Act, formulate and approve any plan to finance distribution expenses in accordance with Rule 12b–1 under the 1940 Act.

## Conclusion

Applicants submit that for the reasons and based upon the facts set forth above, the requested exemptions from Sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of a mortality and expense risk charge, a guaranteed minimum death benefit charge, and a distribution fee under the Account Contracts and Other Contracts meet the statutory standards of Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5335 Filed 3–3–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20922; 812–8846]**

## Prudential Securities Incorporated, et al.; Notice of Application

February 27, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Prudential Securities Incorporated (the ''Sponsor''); and National Municipal Trust, Prudential Unit Trusts, National Equity Trust, and Government Securities Equity Trust (the ''Trusts'').

**RELEVANT ACT SECTIONS:** Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) to amend a prior order (the ''Prior Order'') granting relief from section 11(c).[1]

**SUMMARY OF APPLICATION:** Applicants seek to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

**FILING DATES:** The application was filed on February 22, 1994 and amended on July 21, 1994, January 19, 1995, and February 21, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request

[1] Prudential-Bache Securities, Inc., Investment Company Act Release Nos. 14943 (Feb. 18, 1986) (notice) and 14989 (March 13, 1986) (order).

notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 32 Old Slip, New York, New York 10292.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, at (202 942–0570 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

## Applicant's Representations

1. Each of the Trusts is a unit investment trust sponsored by the Sponsor. The Trusts are made up of one or more separate series (''Series''). Over four hundred Series of the Trusts are currently outstanding.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities and deposits them with a trustee in exchange for certificates representing fractional undivided interests in the portfolio of securities (''Units''). Units currently are offered to the public through the Sponsor and other underwriters and dealers at a price based upon the aggregate offering side evaluation of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 2.00% to 5.50% of the public offering price. The Sponsor may offer a discounted sales charge to unitholders within a Series based on the quantity of Units purchased. The sales charge may also vary among Series depending on the terms of the underlying securities.

3. Applicants seek an order under section 6(c) exempting them from sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) and rule 22c–1 thereunder to let them impose sales charges on Units on a deferred basis and waive the deferred sales charge in certain cases. Under applicants' proposal, the Sponsor will continue to determine the amount of sales charge per Unit at the time portfolio securities are deposited in a Series. The Sponsor will have the discretion to defer collection of all or part of this sales charge over a period (''Collection Period'') following the settlement date for the purchase of Units. The Sponsor will in no event add to the deferred amount initially determined any additional amount for interest or any similar or related charge to reflect or adjust for such deferral.

4. The deferred sales charge (''DSC'') may be (a) deducted from the proceeds of a sale, exchange, or redemption of units or termination of the Series; or (b) deducted from (i) amounts received on the sale of portfolio securities, (ii) amounts received on the maturity of portfolio securities, (iii) income distributions on the Units, or (iv) a combination thereof (''Distribution Deductions''). Alternatively, the trustee may advance the DSC on behalf of the Series on a periodic basis, in which case the trustee will be reimbursed from the income or principal account of the Series upon the receipt of proceeds from the maturity or sale of portfolio securities, until the total amount per unit is collected. The total of all these amounts will not exceed the aggregate DSC per unit.

5. For purposes of calculating the amount of the deferred sales charge due upon redemption or sale of Units, it will be assumed that Units on which the balance of the sales charge has been collected from installment payments are liquidated first. Any Units disposed of over such amounts will be redeemed in the order of their purchase, so that Units held for the longest time are redeemed first.

6. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales, exchange, or redemption proceeds, if necessary, so as not to jeopardize the tax-exempt nature of various investors such as Individual Retirement Accounts and employee benefits plans, if otherwise required for tax purposes, or for such other reasons as disclosed in the prospectus.

7. The date and amount of each DSC accrual or payment will be disclosed in the prospectus. The prospectus for a Series will disclose that portfolio securities may be sold to pay the DSC if amounts in the income account are insufficient to pay the DSC or proceeds from portfolio securities are intended to pay the DSC. The confirmation received by a holder on the purchase, sale, exchange, or redemption of a Unit will indicate the DSC to the extent required by National Association of Securities Dealers, Inc. rules. The account statement of a holder will reflect a value for a Unit. The account statement, however, will not reflect the amount a holder paid for the up-front sales charge. At the end of every year, the Series' annual report will reflect the aggregate amount of any Distribution Deductions taken, both on a Series and per Unit basis.

8. Units received in an exchange are subject to a fixed dollar sales charge of $15, $20, or $25 per $1000 of Units for (a) Units trading in the secondary market, (b) Units trading in the secondary market received upon the exchange of units of a trust not solely sponsored by the Sponsor, and (c) Units received during such Series' initial offering period, respectively. When Units held for less than five months are exchanged for Units with a higher regular sales charge, the sales charge will be the greater of (a) the reduced sales charge or (b) the difference between the sales charge paid in acquiring the Units being exchanged and the regular sales charge for the quantity of Units being acquired, determined as of the date of the exchange.

9. Applicants seek to amend the Prior Order to permit offers of exchange of Units subject to a DSC. If a Unit subject to a DSC is being exchanged, the proceeds due to the exchanging investor will be net of the DSC due upon the sale of a Unit at such time. Units acquired in the exchange will be subject to the greater of a sales load of a fixed dollar amount (currently ranging from $15 to $25 depending on whether the Series being acquired is in the initial offering period or the secondary market) or the amount of the DSC remaining on the Units being acquired.

10. The Sponsor may offer certain Series that have intermediate or short-term stated maturities. Upon termination of such Series, the Sponsor may create a new Series with the same investment objective, the same type of portfolio securities as the terminating Series, and in certain instances some of the same portfolio securities. Applicants wish to make Units of the new Series available to the unitholders of the terminating Series at the net asset value of the new Units plus a reduced sales charge on an up-front and/or deferred basis (the ''Rollover Option''). Although applicants believe that the Prior Order already permits the Rollover Option, they request that the Prior Order be amended to cover the Rollover Option explicitly.

## Applicants' Legal Analysis

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive

approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets.[2]

3. Section 2(a)(35) defines the term ''sales load'' to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a DSC is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a DSC may cause a redeeming unit holder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this section and rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d-1 was adopted to permit the sale of redeemable securities ''at prices that reflect scheduled variations in, or elimination of, the sales load.'' Because rule 22d–1 may not be interpreted as extending to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit each Series to waive or reduce the DSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from distribution deductions or Trust assets.

7. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the unitholders of the Trusts. Thus, granting the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 11(c) prohibits any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses incurred in connection with the exchange.

## Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The amount of the sales charge per Unit collected from a holder at the time of any exchange or conversion of a Unit will be lower than the sales charge collected on the initial purchase of the same Unit at such time.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–5336 Filed 3–3–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Without an exemption, a trust selling unit subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only ''redeemable securities.''

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## SMALL BUSINESS ADMINISTRATION

### Preferred Lenders Program; FA$TRAK Pilot Program

**AGENCY:** Small Business Administration.

**ACTION:** Notice of pilot program ''FA$TRAK''.

**SUMMARY:** the Small Business Administration (SBA) is establishing a pilot program in which certain lenders will be permitted to use their own documentation and procedures to approve loans to small businesses using the Section 7(a) loan program in return for a reduced percentage of guaranty and other modifications to SBA's normal lending practices. This program will be called FA$TRAK and will be considered a part of the Preferred Lenders Program.

**DATES:** This pilot will be effective on February 27, 1995 and will remain in effect for 2 years.

**FOR FURTHER INFORMATION CONTACT:** James W. Hammersley, Deputy Director, Office of Financing, U.S. Small Business Administration, 8th floor, 409 3rd St., SW., Washington, DC 20416; 202–205–6493.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration (SBA) is establishing the FA$TRAK pilot program as part of the existing Preferred Lenders Program. This program is designed to streamline the process by which a lender receives a guaranty from SBA on a loan made to a qualifying small business. It is SBA's goal to utilize, to the maximum extent possible, existing documentation of participating lenders. Therefore, for FA$TRAK loans lenders will be permitted to use their own application form(s), internal credit memoranda, notes, collateral documents, servicing documentation and liquidation documentation. The SBA will limit the use of government-mandated forms to those forms necessary to authorize the lender to disburse the loan with a government guaranty, record the guaranteed balance and loan status, and ensure that the borrower has agreed to those items required by law and regulation.

Lenders participating in this pilot program will be given the ability to attach an SBA guaranty to an approved loan without having to submit the loan application to an SBA field office for a credit analysis or review. These loans will be sent to a single location for assignment of an SBA loan number and a determination of borrower eligibility.

In return for this flexibility and the ability to attach an SBA guaranty to a loan without prior review by SBA, lenders will agree to: limit the maximum loan amount to $100,000; accept a maximum guaranty of 50 percent; and, waive payment on defaulted loans until after the lender has completed liquidation and SBA has reviewed the underlying documentation supporting the loan. The payment of interest on defaulted loans will be limited to 120 days. Lenders will be responsible for loan servicing and liquidation and will be required to indemnify SBA against any loss due to documentation drafting errors or negligent servicing and liquidation.

Many aspects of the existing SBA guaranteed loan program will continue to be utilized in FA$TRAK. Borrowers who are not eligible for assistance under the existing program will not be eligible under FA$TRAK. Lenders will be provided with general guidance on eligibility; however, the SBA loan processing office will make an eligibility determination. Lenders must negotiate interest rates that are within the SBA maximum interest rate ceiling. The current SBA policy on fees charged by the lender will remain in effect. SBA reserves the right to review any fees charged by a lender that the applicant considers to be unreasonable. If SBA determines that such fees are unreasonable, the lender agrees to return the excess to the applicant.

During the pilot program, lenders will not be permitted to sell the guaranteed portion of these loans into the secondary market because SBA will not have reviewed the loan documentation for these loans prior to such sale.

Lenders will be permitted to reduce their exposure to an existing borrower of the bank by making a FA$TRAK loan only if the existing loan has always been current (no payment more than 29 days late).

The pilot program is scheduled to last 2 years, beginning on February 27, 1995. Prior to the termination date, SBA will review the experience with the program and determine if final rules and regulations will be developed.

The Rules and Regulations for the Preferred Lenders Program may be found at 13 CFR 120.400. During this pilot, various sections of SBA rules will be suspended only for FA$TRAK loans made by lenders participating in the FA$TRAK program. The suspended sections include, but are not limited to, Section 120.102–2, 120.402–2, 120.403–2 and 120.403–4. A copy of the FA$TRAK supplemental guaranty agreement and the program guide are attached to this notice. These documents provide more detailed information on the operation of the pilot program.

**Philip Lader,**

*Administrator.*

**Small Business Administration**

*Supplemental Guaranty Agreement FA$TRAK*

This agreement is made this _____ day of _____, 19____ (''the effective date'') by and between the _____ (''Lender'') and the U.S. Small Business Administration (''SBA''), an agency of the United States Government.

Whereas, this is a Supplemental Guaranty Agreement (''Supplemental Agreement'') to the Loan Guaranty Agreement (SBA Form 750, dated 10–83) between the parties hereto, dated _____, (''the Guarantee Agreement'') all the provisions of that SBA Form 750 are applicable to loans made by lender to small business concerns under the FA$TRAK program, which is a process for approving, servicing and liquidating loans made under the Preferred Lenders Program (PLP), except as otherwise provided herein.

Whereas, the parties intend under this Supplemental Agreement for the Lender to perform the processing and most of the servicing and liquidating tasks associated with loans of $100,000 or less in principal amount under the FA$TRAK portion of the Preferred Lenders Program;

The parties agree as follows:

1. Under this Supplemental Agreement, Lender will be permitted to issue an SBA guaranty for any loan of $100,000 or less in principal amount approved under FA$TRAK procedures which meets the requirements and standards for FA$TRAK loans. Except as specifically provided herein or in the Program Guide for FA$TRAK, such loans are subject to all PLP Rules and Regulations as promulgated from time to time. Lender shall have the authority to issue a loan guaranty agreement and such other loan approval forms as may be necessary in order to permit a small business to receive a FA$TRAK loan from the Lender.

2. In conjunction with each FA$TRAK loan, the Lender shall be permitted to use its own application forms and other credit documents normally required by it for approving loans, and its own note and other forms of loan documentation specifically including a settlement sheet and all other instruments which it uses to make, service and liquidate similar loans in a manner consistent with prudent lending practices and loan documentation. After Lender performs a thorough credit analysis relative to an application for a FA$TRAK loan, it will forward such summary information as SBA requires in the Program Guide for FA$TRAK to the SBA's FA$TRAK Processing Center. SBA will endeavor to provide Lender with an SBA loan number within one working day of receipt of the summary information.

3. Lender assumes the responsibility for the completeness of each FA$TRAK application package and all documentation it has relieved upon to make a credit judgment for a FA$TRAK loan. Lender agrees to require approved borrowers to execute SBA Form 1920 prior to first disbursement {this form contains requirements that are mandated by Congress as a condition for receiving federal financial assistance}.

4. The percentage of SBA's guaranty of a loan guaranteed under this Supplemental Agreement shall not exceed fifty percent (50%) of the outstanding principal amount of the loan at the time of disbursement.

5. Approval of a loan under procedures established by this Supplemental Agreement shall constitute certification by the Lender, to the best of its professional knowledge and judgment at the time of loan approval, and in accordance with standard and prudent lending practices, that:

a. The partners, principal owners, officers, and management of the applicant are of good charter;

b. There is a reasonable assurance of repayment by the borrower according to the terms determined by the lender;

c. Without the guaranty of the SBA, the loan funds would not otherwise be available on reasonable terms to the applicant, or from the personal resources of the principal owner of the applicant; and

d. The Lender is not and will not be in a superior lien position on any collateral securing the FA$TRAK loan, unless the application file contains an explanation leading to the necessity of the subordinated lien position and a complete description of the lien positions as a result of the subordination.

6. Lender agrees that it will not approve any FA$TRAK loan application on which the Applicant has noted any outstanding SBA business, disaster or development company loans

(guaranteed or otherwise), unless the outstanding SBA loans are current at the time of approval of the FA$TRAK loan and the Lender does not possess any information that could indicate impending default on any such loan.

7. Lender shall service loans made under this Supplemental Agreement in accordance with the provisions of 13 C.F.R. § 120.404 {copy attached} of the PLP regulations and the Guarantee Agreement. Lender is permitted to perform any servicing action on any FA$TRAK loan in its portfolio that does not confer a preference on the lender except that the Lender may not unilaterally compromise or sell the borrower's obligation for less than the amount owned on that obligation. Lender may use its own documents to record servicing changes as necessary.

8. Lender agrees to liquidate all SBA loans made under this Supplemental Agreement unless written instructions to the contrary are received from SBA. Liquidation will be conducted in a commercially reasonable manner and will be consistent with SBA's regulations and the Guarantee Agreement.

9. Lender agrees that interest on any FA$TRAK loan made under this agreement will cease to accrue after 120 days from the date of the earliest uncured default. Further, Lender agrees to withhold a request for SBA to honor its guaranty on any loan made hereunder until final liquidation of the loan is completed by lender, including liquidation of all worthwhile collateral and recovery from any collectible obligor(s). Payment will be made after SBA has reviewed and approved all documentation supporting the making, closing, servicing and liquidating of the loan.

10. Lender agrees to provide SBA with a notification of loan status on an as requested basis (requests will initially be quarterly but may be changed to monthly after an electronic reporting mechanism is developed).

11. (a) Lender authorizes SBA to make periodic reviews and audits of all loans made under this Supplemental Agreement, including making copies and extracts from, all files, records, papers, or other relevant information. Lender authorizes all Federal, State and municipal authorities to furnish reports of examination, records and other information relating to the condition and affairs of the Lender and any desired information from reports, returns, files, and records of such authorities upon request by SBA.

(b) Lender agrees to photocopy a representative sample, as defined by SBA, of its FA$TRAK loan files on an occasional basis, as determined by SBA and to send these copies to SBA.

12. The SBA guaranty on any loan made under this Supplemental Agreement shall commence immediately upon first disbursement by the Lender. After that time, denial of liability on the guaranty shall take place only upon the determination by SBA that the Lender is guilty of fraud, negligence, misrepresentation or other misconduct, or violation of any provision of this Supplemental Agreement, the Guaranty Agreement (SBA Form 750), SBA's Rules and Regulations, or the Program Guide for FA$TRAK.

13. This agreement shall be effective for two years from the Effective Date, unless both parties agree in writing to a renewal prior to the expiration of the two-year period. Either party may terminate this agreement without cause upon not less than ten (10) business days written notice by certified mail to the other party. Termination shall not affect the guaranty of any loan approved by the lender pursuant to this Supplemental Agreement.

14. The provisions of the Program Guide for FA$TRAK are an integral part of this Supplemental Agreement and are incorporated herein by reference. Lender represents to SBA that it fully understands the Program Guide.

15. The guaranteed portion of loans approved pursuant to this Supplemental Agreement may not be sold in the Secondary Market.

16. All of the terms and conditions of the Guaranty Agreement (SBA Form 750) not expressly modified by this Supplemental Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Lender and SBA have caused this agreement to be duly executed as of the date written above.

_____
Institution

_____
Signature

_____
Typed Name

_____
Street Address

_____
City, State, Zip Code

U.S. Small Business Administration

_____
Signature

_____
Typed Name

_____
Title

**BILLING CODE 8025–01–M**

FAX TRAK

February 27, 1995
U.S.Small Business Administration

BILLING CODE 8025–01–C

## I. Introduction

This program guide contains the policies, procedures and guidelines for implementation of FA$TRACK. This guide is an integral part of the ''Supplemental Guaranty Agreement for FA$TRACK'' and has been incorporated therein by reference. Participation in FA$TRACK is limited to those lenders which have been approved by SBA for FA$TRACK program participation and have executed the supplemental guaranty agreement.

FA$TRACK is intended to increase the capital available to those businesses seeking loans of $100,000 or less by permitting lenders to use their existing documentation and procedures and receive an SBA guaranty on the loan. Eliminating the requirement that SBA forms be used and application procedures be followed will allow lenders to reduce the cost of processing an SBA guaranteed loan. SBA hopes that reducing the cost of providing credit will encourage lenders to make smaller loans. To further reduce the lender's cost of doing business with SBA, lenders participating in FA$TRACK will be permitted to use their own internal documentation for servicing actions and will be permitted to use their existing procedures for loan liquidation.

In exchange for the authorities described above and in recognition of the increased risk assumed by SBA, lenders participating in FA$TRACK agree to accept a maximum guaranty of 50% on each loan. The guaranty of 50% is designed to give participating lenders the credit enhancement needed to approve certain applications while recognizing that SBA has not reviewed the credit or the documentation of the participating lender. Lenders desiring a guaranty higher than 50% for a specific case are permitted to use regular SBA procedures and forms to submit a loan to SBA for a guaranty up to 90%.

## II. Eligibility Requirements for FA$TRACK

The Small Business Act provides certain requirements and restrictions on businesses which are entitled to government financial assistance. These considerations are described below.

### *A. Size Standards*

While the $100,000 maximum loan amount will tend to limit the size of business interested in this type of loan, SBA's existing size standards which are described in Part 121 of Title 13 of the Code of Federal Regulations apply to all loans approved under FA$TRACK. These size standards refer to the applicant and any affiliates.

### *B. Eligible Loan Recipients*

Lenders may not obtain a guaranty for loans to certain types of businesses. SBA rules on applicant eligibility are located in Section 120.101 and 120.102 of Title 13 of the Code of Federal Regulations. A copy is included as Appendix 1 to this guide. These rules are subject to change. Any questions regarding eligibility may be directed to the Sacramento FA$TRAK Processing Center. The names and telephone numbers for the Processing Center staff are located in Appendix 2.

### *C. Conflict of Interest*

Lender may not use FA$TRAK procedures to approve a loan to a firm in which any of the owners or managers are also an employee of the lender or SBA or own 10% or more of the stock of the lender. Furthermore, FA$TRAK may not be used to make a loan to an associate or close relative (See 13 CFR 120.2–2, Appendix 3.) of either of the above described individuals.

### *D. Ineligible Uses of Loan Proceeds*

In general, loan proceeds may be used for the same purposes as loans approved without an SBA guaranty. Loan proceeds may not be used for the following purposes:

a. To pay off inadequately secured creditors.

b. To provide funds for distribution to the owners of a business unless these funds fully change the ownership of a business. Loans for a change of ownership are eligible provided there is a 100% change of ownership and the transfer is not between family members.

c. To refund any debt owed to a Small Business Investment Company.

d. To fund a gambling operation, except that businesses that receive less than one-third of their revenue from the commissions on the sale of state lottery tickets or businesses involved in state supervised gambling operations are eligible.

e. To finance real estate held for investment, purchases of stock for investment, or to make loans to non-profit entities.

f. To fund a loan that would reduce lender's own or an affiliate's exposure to a business, unless the existing debt has always been current (no payments more than 29 days past due during the life of the credit). Refinancing of the debt owed to another lender is allowed, however, the FA$TRAK participant must insure that the refinancing is beneficial for the borrower due to more reasonable terms or the transfer of a borrower's account relationship from other sources to the FA$TRAK participant. Care should be taken to avoid the appearance that the lender is using FA$TRAK to bail itself out of an inadequately secured or poorly performing credit.

g. To fund a loan when funds are available from other sources on reasonable terms including disposal of unneeded business assets and use of personal resources provided there is no undue hardship involved in the use of personal funds. A self certification by the lender that funds would not otherwise be available on reasonable terms, as determined by the lender, is part of SBA Form 1920, FA$TRAK Authorization and Request for Loan Number.

h. To fund a loan for the purchase or construction of real estate, the purchase or repair of equipment, or the refinancing of a loan used for those purposes, when the applicant business is not a 100% owner operator of the real estate or personal property being financed. In cases where the applicant is not a 100% owner operator, the loan may be submitted to SBA using regular 7(a) procedures. Loan proceeds may be used to finance real property with residential or rental space provided that in purchasing an existing building, residential and/or rental space must be less than 50% of total space, location must be conducive to the success of the business and other facilities must not be reasonably available and in constructing a building, the business must need a resident owner or manager and residential space must not exceed 33⅓% of the total or business growth is reasonably projected to indicate need for space in the reasonably near future, later additions are not feasible, and residential space does not exceed 33⅓% of total space.

i. To make a loan to a recreational or amusement enterprise that is not open to the public and properly licensed.

j. To replenish working capital funds used for any of the above purposes.

## III. Eligible Loan Types

FA$TRAK procedures may be used for term loans or revolving credits made by the lender. Revolving credits must have a termination date that cannot exceed five years from the date of first disbursement. If the borrower remains creditworthy, a new revolving FA$TRAK loan can be approved.

## IV. Terms and Conditions

### *A. Loan Amount*

The maximum loan amount that may be approved using the FA$TRAK procedure is $100,000.

*B. Percentage of SBA's Guaranty*

The guaranty on loans approved under FA$TRAK will be limited to a maximum of 50%.

*C. Interest Rates*

(1) Loans approved using the FA$TRAK procedure are subject to the same maximum interest rate as all SBA loans. For loans in excess of $50,000 the maximum interest rate is 2.25 percentage points above the prime rate as published in the *Wall Street Journal* (WSJ) for loans with a maturity of less than seven years and 2.75 percentage points above the WSJ prime rate for loans with a maturity of seven years or longer. FA$TRAK participants may use the additional interest rate spread authorized by 13 CFR 122.8–4(g) for loans approved using the FA$TRAK procedure. Thus for loans of $25,000 or less, the maximum rate is the WSJ prime plus 4.25 and 4.75 depending on the maturity and for loans over $25,000 but not exceeding $50,000 the maximum rate is the WSJ prime rate plus 3.25 and 3.75 depending on the maturity.

(2) Loans may have a fixed or variable rate of interest. If a variable interest rate is used, the lender may use the same base rate of interest used on similar loans made without an SBA guaranty.

**V. Fees**

*A. Guaranty Fee*

The guaranty fee will be 2% of the amount guaranteed for any loan with a maturity greater than one year. If the maturity is less than one year, the guaranty fee will be ¼ of one percent. The fee splitting arrangement accorded lenders using regular procedures for loans under $200,000 will not apply to FA$TRAK. The guaranty fee must be paid within 90 days of the loan approval date or immediately after first disbursement, whichever is earlier for loans with a maturity of one year or greater. If the maturity is less than one year, the guaranty fee must be submitted with the application for an SBA loan number. Lender may charge Borrower for the guaranty fee only after Lender has paid the fee and an initial disbursement was made on the loan. This fee may be collected at the time of loan closing if there is a disbursement at closing.

*B. Late Payment Fee*

Lenders are permitted to charge borrowers a late payment fee of up to 5% of the payment amount for payments not received within 10 days of the due date.

*C. Extraordinary Servicing Fee*

An extraordinary servicing fee of up to 2% of the outstanding balance may be collected in cases involving construction, or using accounts receivable or inventory for collateral.

*D. Other Fees*

Application fees, commitment fees or prepayment fees are not permitted on term credits.

*E. Revolving Credit Fees*

Lenders will be permitted to use the same fee schedule for revolving credits approved by the lender without an SBA guaranty. These fees must be reasonable and are subject to review by SBA. Fees determined by SBA to be unreasonable must be returned by the lender to the borrower.

**VI. Loan Making, Servicing and Liquidation**

*A. Application Forms*

(1) Lenders are permitted to use their own application forms, internal credit memoranda and any other documentation necessary to make a credit determination. Lenders must insure that their application form includes language in which the applicant certifies that the information supplied is true and complete. This language must appear on the application form or on the financial statement from the applicant if a specific application form is not used. The form including this certification must be signed by the borrower.

(2) Lender will be required to obtain a signed copy of SBA Form 1919, FA$TRAK Borrower Information Form from a sole proprietor, all partners, or each officer, director, or each holder of 20% or more of the voting stock of a corporate applicant, and any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business. The form must be part of the loan file, but does not have to be sent to the Processing Center. If the applicant answers ''yes'' to either of questions 1, 2, or 3, the loan may not be submitted under FA$TRAK. It may be submitted to the local SBA office using regular processing procedures.

*B. Credit Decision*

(1) Lenders approved to use the FA$TRAK procedure are responsible for a thorough and complete credit analysis. This analysis should be in the loan file and is subject to SBA review. An analysis for a loan that is approved should demonstrate that the loan can be repaid from the cash flow of the business and that the applicant is of good character.

(2) Applications that are declined by the lender should be handled in the same manner the lender handles declined applications for conventional loans. These applications will not be considered applications for an SBA guaranteed loan.

*C. Notification to SBA*

(1) FA$TRAK lenders may request a loan number from SBA by submitting an executed SBA Form 1920, FA$TRAK Authorization and Request for Loan Number. This document serves both as an Authorization by the FA$TRAK lender for the loan and a request to SBA to issue the loan number. This form will contain the information necessary for SBA to issue loan number and a certification that the funds are not available elsewhere on reasonable terms. This form may be faxed or sent to the Processing Center in Sacramento, California. The Processing Center is set up to provide a loan number to the FA$TRAK lender by fax.

(2) SBA's budget is determined by Congress on an annual basis. SBA does not have authority to guaranty loans if it has run out of authority. While loan approval authority has been delegated to the FA$TRAK lender, the loan does not have an SBA guaranty until the SBA Processing Center has issued a loan number. The processing center will not issue a loan number if funds are not available.

*D. Closing and Disbursement*

(1) FA$TRAK participating lenders will use the same closing and disbursement procedures for FA$TRAK loans as are used for their conventional loans. Loans may be closed by the lender's attorney and lenders are permitted to use their own closing documentation. This documentation includes, but is not limited to the lender's note, personal guaranty statements, mortgage, deed of trust or other security agreements, resolutions of the Borrower's Board of Directors, and a review of insurance requirements.

(2) FA$TRAK participants must use the FA$TRAK Authorization and Loan Agreement (SBA Form 1920) for all loans approved using the FA$TRAK procedure. The signature block of the Form must contain the following language: ''As a participant in the FA$TRAK portion of the Preferred Lenders Program and agent of and on behalf of SBA.''

(3) Lender must do the following prior to disbursement for each loan for which it issues an SBA guaranty:

A. Receive satisfactory evidence that there has been no unremedied adverse change since the date of the Application, or since any of the preceding disbursements, in the financial or any other condition of Borrower which would warrant withholding or not making any such disbursement or any further disbursement.

B. Receive evidence of the kind described below from an independent authoritative source which is sufficient to indicate to Lender that any collateral property is not in a special flood hazard area. If such evidence is not provided to Lender, Lender must obtain from Borrower agreement to obtain, and maintain, a Standard Flood Insurance Policy or other appropriate special flood hazard insurance in an amount and coverage equal to the lesser of (1) the insurable value of the property or (2) the maximum limit of coverage available. The Borrower can show that special flood hazard insurance has been acquired by submitting a copy of the policy or providing evidence of premium payment for the appropriate coverage to a licensed insurance agent. Borrower will not be eligible for either any future disaster assistance or SBA business loan assistance if the special flood hazard insurance is not maintained as stipulated herein throughout the entire term of its loan.

As evidence that the property is not located within a special hazard area subject to flooding, mudslides, or erosion, Lender may rely on a determination of special flood hazard area status by the applicant's property & casualty insurance company, real estate appraiser, title insurance company, a local government agency or other authoritative source acceptable to SBA which would ordinarily have knowledge of the special flood hazard area status for the property.

C. In the construction of a new building or an addition to a building, obtain agreement from the Borrower that the construction will conform with the ''National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings.'' Compliance with these requirements shall be evidenced by a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that the issuance of an occupancy permit is required and is subject to conformance with building codes and that the local building codes include the Seismic standards.

The following codes have been identified as being substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions: 1991 Uniform Building Code of the International Congress of Building Officials (ICBO); 1992 Supplement to the Building Officials and Code Administrators (BOCA) National Building Code; 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code.

D. Obtain agreement from the Borrower that it will, to the extent feasible purchase only American-made equipment and products with the proceeds of this loan.

E. For any loan involving construction of more than $10,000, require borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance. Appendix 4 is a copy of Form 601. This form must be retained in the loan file, but does not have to be submitted to the FA$TRAK Processing Center.

(4) The Small Business Act requires that all borrowers supply information regarding payments to loan packagers, accountants, appraisers, lawyers, or any other individual or entity that assisted the borrower in obtaining the loan. SBA Form 159 may be used for this purpose or the lender may use its own form as long as the information required by SBA Form 159 is supplied by the borrower and the service provider. Appendix 5 is a copy of Form 159. This form must be retained in the loan file, but does not have to be submitted to the FA$TRAK Processing Center. If the applicant did not pay anyone to assist in the preparation of the loan, a written certification to that effect is sufficient to meet this requirement.

## VII. Loan Servicing

A. Lenders will be permitted to service loans approved under FA$TRAK using the same policies and procedures used for the lender's conventional loan portfolio. These policies and procedures must be based on prudent lending practices and the FA$TRAK lender should be prepared to demonstrate to SBA that a servicing action taken on a FA$TRAK loan is consistent with actions taken on loans in the lender's unguaranteed portfolio.

B. There are two actions that cannot be delegated to the FA$TRAK participating lender. They are:

(1) Selling or accepting a compromise settlement of any indebtedness guaranteed by SBA for a sum less than the total amount due on the loan, and

(2) Enforcing compliance by the borrower with non-discrimination regulations (13 CFR Part 113). This enforcement shall be subject to action by SBA.

C. SBA must be notified of any servicing action that alters any of the repayment terms of the loan. This includes, but is not limited to, changes in the interest rate on fixed rate loans or the interest rate spread on variable rate loans, maturity, or payment schedule. Notification should be sent to the servicing office responsible for the loan. The servicing office address will be provided to the FA$TRAK lender along with the loan number.

D. Lender may release collateral as necessary. Due to the perception of a preference for the FA$TRAK lender, care should be taken to fully document and justify any release of collateral for an SBA guaranteed loan that will subsequently be pledged for a conventional loan from the lender.

## VIII. Loan Liquidation

A. A participating lender will be expected to fully liquidate any loan approved using FA$TRAK. The lender must follow the same policies and procedures it uses for its non-guaranteed portfolio and should be prepared to demonstrate that it has done so. All liquidations of FA$TRAK loans must be commercially reasonable.

B. Proceeds from the sale of collateral shall be applied first to the expenses associated with the liquidation, secondly, to the 120 days of interest permitted on the balance as of the earliest uncured default and finally to the principal balance. SBA will not pay to the lender an amount in excess of 50% of the loan balance at the time of default plus 120 days of interest at the rate in effect on the date of default. The Lender must absorb any expenses that exceed this amount.

C. Any action taken during the liquidation of a loan must be fully documented. SBA will review liquidation actions as part of the general review of a lender's use of the FA$TRAK program. It is not necessary to provide a liquidation plan to SBA.

D. SBA reserves the right to purchase its guaranty prior to liquidation and to liquidate the loan using SBA personnel, however, it is expected that this right will be used only in very unusual circumstances.

E. Lender is permitted to take back a Note Receivable on the sale of collateral on any terms negotiated between the lender and the buyer. The Note Receivable will not have an SBA guaranty.

F. Lender is to insure that ordinary protective measures are taken. Expenses associated with the protection of

collateral may be recovered from the proceeds of the sale of collateral.

G. Collateral sales to the Lender's officers, directors, employees or stockholders (10% or greater) or a close relative of either are not permitted.

H. The selection of firms owned by officers, directors, employees or stockholders (10% or greater) to provide care and preservation services, legal assistance, or other services associated with the liquidation should be avoided. If it cannot be avoided, the lender must be prepared to justify the benefit to SBA of using the particular firm.

**IX. Payment of the SBA Guaranty**

A. Payment of the SBA guaranty will be made after the lender has fully liquidated all collateral and pursued all obligors and after SBA has reviewed the documentation that supports the loan. Payment will consist of the SBA guaranteed percentage of the balance remaining after liquidation plus up to 120 days of interest based on the balance outstanding at the time of the earliest uncured default if liquidation proceeds were insufficient to cover a full 120 days of interest.

B. To receive payment, lender must submit a transcript of account, a summary of liquidation activities, a detail of liquidation expenses, and a copy of the Note and relevant loan documents to the SBA office servicing the loan. The servicing office will review the account and prepare the paperwork required to wire SBA's portion of the loss to the lender.

**X. Lender Selection and Review**

A. Lenders will be selected for participation in FA$TRAK based on their desire to increase lending under $100,000 to small businesses, especially minority and women owned businesses. An SBA district office shall make a nomination to the Central Office, which will make a decision. A lender will receive the FA$TRAK designation for its entire system. This may involve executing multiple copies of the supplemental guaranty agreement depending on the legal structure of the lender.

B. The loan approval authority in the supplemental guaranty agreement for FA$TRAK will last for two years. At the end of two years, the activity will be reviewed and may be renewed for either one or two years. The servicing and liquidation provisions will last for the life of any loan approved using FA$TRAK.

C. SBA will monitor the progress of the FA$TRAK loans approved by each other. We will use the performance of loans approved under FA$TRAK to determine if a lender may continue to participate in FA$TRAK. Lenders that violate the terms of the supplemental guaranty agreement, this guidebook, or SBA regulations as determined by SBA shall be removed from the program.

D. SBA reserves the right to make a periodic on-site review of the loan files for FA$TRAK loans. SBA may, from time to time, ask FA$TRAK lenders to photocopy documents in a file selected by SBA and send the copy to SBA for review. This procedure is intended to limit the intrusion on the lender by SBA reviewers and to reduce the cost to SBA of program monitoring. Lender acknowledges that the SBA review does not give rise to any estoppel claim, right or defense if SBA should determine that it will not honor its guaranty on a loan approved using FA$TRAK.

E. If a problem develops with part of a lender's operation in one location, the lender will be notified and given a reasonable time to correct the problem. If the problem is not corrected, the lender's entire organization will be removed from FA$TRAK.

**XI. Lender Reporting**

Lenders will be required to report the status and outstanding balance of each loan approved under FA$TRAK on SBA form 1175. This form is submitted on a quarterly basis to the SBA field office. SBA is in the process of developing an electronic data interchange (EDI) system for lender reporting. FA$TRAK lenders will be expected to use EDI after it has been implemented for SBA reporting.

**XII. Secondary Market**

Loans approved using the FA$TRAK procedure may not be sold in the secondary market.

**XIII. Lender Mergers**

A lender's status as a participant in the FA$TRAK will be reviewed at the time of a merger and a decision will be made regarding whether the new entity will be a participant in FA$TRAK.

**XIV. IRS Tax Verification**

Lenders must verify tax returns of the business prior to disbursement of a FA$TRAK loan. Tax verification procedures are included in Appendix 6. SBA has a cooperative agreement with the IRS to provide information within ten days. The key to a quick reply from the IRS is to ask for a transcript of the tax return, not a copy of the return and to write the words ''SBA Loan Application'' at the top of the form. Please report any problems with the tax verification system to the FA$TRAK Processing Center or your local SBA district office. Lenders are reminded that the letters ''SBA'' must be placed at the top of each request to insure expedited processing and that sole proprietorship information is obtained from a different SBA location than partnership or corporate tax information.

[FR Doc. 95–5337 Filed 3–3–95; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended February 24, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 50148.
*Date filed:* February 21, 1995.
*Parties:* Members of the International Air Transport Association.
*Subject:* COMP Telex Mail Vote 729.
*Proposed Effective Date:* April 1, 1995.

*Docket Number:* 50149.
*Date filed:* February 21, 1995.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC23 Reso/P 0686 dated January 27, 1995, Europe-Southeast Asia Resos r-1 to r-23.
*Proposed Effective Date:* April 1, 1995.

*Docket Number: 50150.*
*Date filed:* February 21, 1995.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC12 Telex Mail Vote 730, Germany-Canada Fares, r-1—076jj r-2—080rr.
*Proposed Effective Date:* April 1, 1995.

**Myrna F. Adams,**

*Acting Chief, Documentary Services Division.*

[FR Doc. 95–5429 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–62–P

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 24, 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 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:* 50153.
*Date filed:* February 24, 1995.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 24, 1995.
*Description:* Application of Horizon Air Industries, Inc. d/b/a Horizon Air, pursuant to 49 U.S.C. 41108 and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing service between Seattle, Washington, and Calgary, Alberta, Canada.

*Docket Number:* 50156.
*Date filed:* February 24, 1995.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 24, 1995.
*Description:* Application of Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc. and Wings West Airlines, Inc. (d/b/a American Eagle), pursuant to 49 U.S.C. 41108 and Subpart Q of the Regulations, requests amendment of their certificate of public and convenience for Route 537, to authorize foreign air transportation of persons, property, and mail between the United States and additional points in the Caribbean.

*Docket Number:* 50157.
*Date filed:* February 24, 1995.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* March 24, 1995.
*Description:* Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between any point in the United States and any point in Canada, subject to a condition that service to Vancouver and Montreal must be separately authorized for a period of two years, and service to Toronto must be separately authorized for a period of three years, consistent with the phase-in provisions for those three cities in the United States-Canada Air Transport Agreement signed on February 24, 1995.

**Myrna F. Adams,**
*Acting Chief, Documentary Services Division.*
[FR Doc. 95–5428 Filed 3–3–95; 8:45 am]
BILLING CODE 4910–62–P

## Coast Guard

**[CGD 95–005]**

## Area To Be Avoided Off the Washington Coast

**AGENCY:** Coast Guard, DOT.
**ACTION:** Extension of comment period.

**SUMMARY:** In response to several requests, the Coast Guard is extending the comment period for written comments on whether the applicability of the area to be avoided (ATBA) off the Washington Coast should be expanded to include vessels and barges other than those carrying cargoes of oil or hazardous materials.

**DATES:** Written comments must be received not later than April 17, 1995. Copies of a written transcript from the February 23, 1995, public meeting will be available for inspection and copying after March 15, 1995 at the addresses indicated in the **ADDRESSES** section which follows.

**ADDRESSES:** Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW. Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

In addition, the written transcript of the February 23, 1995, public meeting will be available for inspection and copying at the Thirteenth Coast Guard District, 915 Second Avenue, Room 3410, Seattle, WA 98174 and at the Olympic Coast National Marine Sanctuary, 138 W. First Street, Port Angeles, WA 98362–2600, from 7:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margie G. Hegy, Project Manager, Vessel Traffic Services Division, phone (202) 267–0415. This telephone is equipped to take messages on a 24-hour basis.

**SUPPLEMENTARY INFORMATION:** The ATBA was adopted by the Maritime Safety Committee of the International Maritime Organization on December 7, 1994, and goes into effect on June 7, 1995. It is recommended that all vessels, including barges, carrying oil or cargoes classified by the United States as hazardous materials (e.g., chemicals) avoid the ATBA.

A meeting to obtain public comment on whether the ATBA off the Washington Coast should be applicable to other categories of vessels was announced in the **Federal Register** on January 27, 1995 (60 FR 5454). The purpose of the meeting, as stated in the meeting notice, was to obtain information to assist the Coast Guard in determining whether there is a need to expand the applicability of the ATBA.

Commenters were asked to respond to ten specific questions, and present any other information. However, the Coast Guard did not propose any specific changes in the area or the applicability. The meeting was held on February 23, 1995, and 17 individuals made oral presentations.

The Coast Guard has received several requests to extend the comment period for submitting written comments beyond the current March 3, 1995 deadline. The additional time will result in a more comprehensive review of the issue and more detailed information for Coast Guard consideration. As the Coast Guard is interested in substantiated comments and giving all concerned parties the opportunity to present information, the comment period is extended until April 17, 1995.

Dated: February 28, 1995.

**G.A. Penington,**
*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.*
[FR Doc. 95–5388 Filed 3–3–95; 8:45 am]
BILLING CODE 4910–14–M

## Federal Aviation Administration

## FAA Approval of Noise Compatibility Program; Fort Worth Alliance Airport; Fort Worth, TX

**AGENCY:** Federal Aviation Administration.
**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 11, 1994, the FAA determined that the noise exposure maps submitted by the city of Fort Worth under Part 150 were in compliance with applicable requirements. On February 7, 1995, the Administrator approved the Fort Worth Alliance Airport noise compatibility program. All of the recommendations of the program elements relating to new or revised flight procedures for noise

abatement were proposed by the city of Fort Worth.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Fort Worth Alliance Airport noise compatibility program is February 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0653, (817) 222–5606. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Alliance Airport, effective February 7, 1995.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The city of Fort Worth submitted to the FAA on August 4, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1991 through July 1994. The Fort Worth Alliance Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on August 11, 1994. Notice of this determination was published in the **Federal Register** on August 18, 1994.

The Fort Worth Alliance Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1994, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eleven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective February 7, 1995.

Outright approval was granted for all of the specific program elements. The following is a listing of the approved actions on and off the airport:

a. Maintain the existing flight track configuration and utilization;

b. Request pilots of airline aircraft to adhere to FAA noise abatement departure procedures;

c. Establish noise overlay zoning district for the airport vicinity as an amendment to the existing airport development zone ordinance;

d. Revise land use plan for noise compatibility;

e. Purchase noise sensitive sites—fee simple;

f. Where fee simple acquisition cannot be achieved, obtain avigation easement and where feasible, soundproofing existing eligible structures within the 65DNL;

g. Enact noise disclosure regulations to inform prospective buyers of potential noise exposure;

h. Assign a noise abatement officer for noise program management for all three city of Fort Worth airports;

i. Continue public involvement program;

j. Implement a periodic noise monitoring program; and

k. Conduct noise review and update as required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on February 7, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Fort Worth Department of Aviation Offices.

Issued in Fort Worth, Texas on February 20, 1995.

**Otis T. Welch,**

*Manager, Texas Airport Development Office.*

[FR Doc. 95–5422 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

## Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Fort Worth Spinks Airport; Fort Worth, TX

**AGENCY:** Federal Aviation Administration.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Fort Worth, Texas for Fort Worth Spinks Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Fort Worth Spinks Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 12, 1995.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 13, 1995. The public comment period ends April 14, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, TX 76193–0653. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Fort Worth Spinks Airport are in compliance with applicable requirements of Part 150, effective February 13, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 12, 1995. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

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 City of Fort Worth submitted to the FAA on February 3, 1995 noise exposure maps, descriptions and other documentation which were produced from November 1991 to January 1995 during the development of the Fort Worth Spinks Airport FAR Part 150 Airport Noise Compatibility Plan. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, 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.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Fort Worth. The specific maps under consideration are Exhibits 10.1 and 10.2 in the submission. The FAA has determined that these maps for Fort Worth Spinks Airport are in compliance with applicable requirements. This determination is effective on February 13, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Fort Worth Spinks Airport, also effective on February 13, 1994. 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 August 12, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 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, Texas Airport Development Office, 2601 Meacham Boulevard, Suite 697, Fort Worth, TX 76193–0653

Mr. A.M. Rivera, Director of Airport Systems, City of Fort Worth, 4201 North Main Street, Fort Worth, TX 76106–2736.

Question may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas on February 13, 1995.

**Otis T. Welch,**

*Manager, Texas Airport Development Office.*

[FR Doc. 95–5421 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

## FAA Approval of Noise Compatibility Program; Fort Worth Meacham Airport; Fort Worth, TX

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 11, 1994, the FAA determined that the noise exposure maps submitted by the city of Fort Worth under Part 150 were in compliance with applicable requirements. On February 7, 1995, the Administrator approved the Fort Worth Meacham Airport noise compatibility program. Most of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the city of Fort Worth.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Fort Worth Meacham Airport noise compatibility program is February 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0653, (817) 222–5606. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Meacham Airport, effective February 7, 1995.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The city of Fort Worth submitted to the FAA on August 4, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1991 through July 1994. The Fort Worth Meacham Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on August 11, 1994. Notice of this determination was published in the **Federal Register** on August 18, 1994.

The Fort Worth Meacham Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1994, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twelve proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective February 7, 1995.

Outright approval was granted for nearly all of the specific program elements.

The following program element was partially approved:

a. Aircraft maintenance runup procedures.

Development of a run-up pad and encouraging its use are *approved*. Designation of engine run-up locations is within the discretion of the airport operator and may be added to the airport rules and regulations and instituted at any time provided that they do not limit Stage 2 or Stage 3 operations so as to qualify as an airport noise and access restriction or create an

undue burden on interstate commerce. Promotion of the continued use of the City Ordinance restricting run-ups between 12 midnight and 6:00 a.m. is *disapproved* pending receipt of additional information regarding the City Ordinance, the airport rules and regulations, and the potential effects on air transportation. Engine run-up restrictions that limit the total number or hours of Stage 2 or Stage 3 operations would require compliance with 14 CFR 161.

The following program elements on and off the airport were fully approved:

a. Voluntary use of noise abatement departure and arrival procedures for aircraft weighting over 12,500 pounds;

b. Noise barriers and acoustical shielding;

c. Rezone properties immediately adjacent to airport property;

d. Revise land use plan for noise compatibility and community revitalization;

e. Purchase noise sensitive sites—fee simple.

f. Where fee simple acquisition cannot be achieved, obtain avigation easement and where feasible, soundproofing existing eligible structures within the 65 DNL;

g. Enact noise disclosure regulations to inform prospective buyers of potential noise exposure;

h. Assign a noise abatement officer for noise program management for all three city of Fort Worth airports;

i. Continue public involvement program;

j. Implement a periodic noise monitoring program; and

k. Conduct noise review and update as required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on February 7, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Fort Worth Department of Aviation Offices.

Issued in Fort Worth, Texas on February 20, 1995.

**Otis T. Welch,**

*Manager, Texas Airport Development Office.*

[FR Doc. 95–5420 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

## Air Traffic Procedures Advisory Committee

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held from April 10 through April 13, 1995, from 9 a.m. to 5 p.m. each day.

**ADDRESSES:** The meeting will be held April 10–12 in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, and on April 13 at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from April 10 through April 12, 1995, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, and on April 13 at the Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 7, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from July 10–13, 1995, in Denver, CO.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC on February 27, 1995.

**W. Frank Price,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 95–5425 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

## Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

**DATES:** The meeting will be held on March 24, 1995, at 9 a.m.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Reginald C. Matthews, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held at 1 p.m. on Friday, March 24, 1995, in Rooms 5A at the Federal Aviation Administration, 800 Independence Ave., Washington, DC. The agenda for this meeting will include briefings on:

- Assignment of new task on special visual flight rules operations;
- Mode S Study; and
- Status of the Unmanned Air Vehicle Working Group.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on February 23, 1995.

**Reginald C. Matthews,**

*Assistant Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.*

[FR Doc. 95–5417 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

## Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Aspen-Pitkin County Airport/Sardy Field, Submitted by Pitkin County, Aspen, CO

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Aspen-Pitkin County Airport/Sardy Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before April 5, 1995.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Smith, Director of Aviation, at the following address: Aspen-Pitkin County Airport/Sardy Field, 0233 East Airport Road, Aspen, CO 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Aspen-Pitkin County Airport/Sardy Field, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Fels, (303) 286–5596; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Aspen-Pitkin County Airport/Sardy Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pitkin County was not substantially complete within the requirements of part 158. Pitkin County was notified by letter dated June 16, 1993, of this determination, with a request for information which would have allowed the application to meet the requirements of part 158. By letter dated June 30, 1993, Pitkin County declined to provide the supplemental information requested. A decision was made by the FAA to defer action on the application pending resolution of Airport Noise and Capacity Act (ANCA) issues. With the passage of Section 517 of Public Law 103–305 and the opening of the airport to night access by general aviation aircraft, under the conditions specified in this legislation, the ANCA issues have been resolved. This allows the FAA to make, at this time, a determination of substantially complete on this application. There has been no change to the original application.

On February 27, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Aspin-Pitkin County Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 4, 1995.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00

*Proposed charge effective date:* July 1, 1995

*Proposed charge expiration date:* January 31, 1998

*Total estimated PFC revenues:* $1,533,541.00

Brief description of proposed project: Relocate State Highway 82; Overlay runway 15/33.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators operating pursuant to § 135.1(a)(3) of the Federal Aviation Regulations (14 CFR).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aspen-Pitkin County Airport.

Issued in Renton, Washington on February 27, 1995.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 95–5418 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

**[Docket No. 94–100; Notice 2]**

## Excalibur Automobile Corporation; Grant of Application for Temporary Exemption From Motor Vehicle Safety Standard No. 208

Excalibur Automobile Corporation of West Allis, Wisconsin, applied for a temporary exemption of its JAC 427 Cobra passenger car for three years from compliance with paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on December 28, 1994, and an opportunity afforded for comment (59 FR 66999). This notice grants the application.

The applicant sought an exemption for its JAC 427 Cobra passenger car, of which it produced 59 between January 1993 and September 1994. Thirty-six of these ''are presently in the control of Excalibur's dealers'', and the applicant asked that the exemption cover these vehicles so that they may be offered for sale and sold in compliance with the law. It plans increased production in 1995, of which 60 to 108 would be sold in the United States.

Excalibur is a small company with 37 employees and net assets of $3,000,000. The company has had cumulative net losses of $4,493,000 from January 1, 1992 to September 30, 1994. If it were required to comply immediately with the automatic restraint requirements of Standard No. 208, it would have to raise the retail price by more than 300 per cent which ''is likely to deemed (sic) to be prohibitive by potential purchasers (and dealers), thereby significantly reducing the line's desirability, if not ending the demand entirely * * *.'' Denial of the petition would result in a reduction of the work force to 8 employees.

Excalibur has been owned since 1991 by German residents, who changed the company's management in August 1994. The new management has not been able

to trace the company's efforts to comply beyond December 1993 when the then Vice President of Production informed the then President that he had ''just located a potential source for a retrofit driver's as well as passenger air bag system.'' Compliance was anticipated ''within weeks.'' NHTSA was likewise informed of this possibility in December 1993. On May 31, 1994, in an incomplete petition for exemption from Standard No. 208, Excalibur informed the agency that its efforts to work with companies in Arizona and Florida had ended in frustration and failure and that it was currently unable to find a source for an adequate, workable airbag system.

According to its application, Excalibur will use the exemption period ''to accommodate a fully-complying airbag system.'' It is investigating the possibility of installing Ford Mustang steering columns and airbag systems, as well as whether its existing column could accept an airbag produced by Breed Technologies. Exempted vehicles would be provided with a three-point restraint system as well as with a ''clearly visible warning label reminding the vehicle's occupants of the importance of wearing their safety belts.

The company argued that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it presently has 17 dealers in 12 states, and ''a thriving manufacturing business and dealer network not only provides employment, but will generate federal and state tax revenues.'' The small number of vehicles that the exemption will cover and the limited mileage they will be driven ensure that an exemption ''will not materially affect overall motor vehicle safety in the U.S.''

No comments were received on the application. That the applicant is experiencing ''substantial economic hardship'' within the meaning of the phrase, as interpreted by NHTSA, over the years, is demonstrated by its continuing and cumulative losses of approximately $4.5 million over the 2 3/4 year period previous to filing its application. The applicant has recently informed NHTSA that at least two of its dealers are seeking to terminate their dealership agreements and to require Excalibur to repurchase vehicles in stock because of their failure to meet the automatic restraint requirements of Standard No. 208.

The efforts of the applicant to make a good faith effort to comply with Standard No. 208 appear to have originated with the company's new ownership in 1991. NHTSA is aware that small manufacturers of open cars, such as Excalibur, have found it difficult to engineer an airbag system into their existing steering columns, let alone to find a supplier interested in providing only a low volume of airbags.

The public interest is served, of course, as the applicant argues, by providing continuing employment to those who manufacture, sell, and repair Excalibur vehicles, as well as the benefits derived from the generation of Federal and state tax revenues. It is also in the public interest to avoid litigation where possible and an exemption may forestall actions against the applicant by its dealers, which would contribute further to its hardship. The overall effect upon motor vehicle safety will be negligible due to the small number of cars that will be manufactured and sold under it, which will be equipped with a three-point restraint system and a label reminding the two passengers of the need to use their safety belts.

The company has also asked that the exemption cover the vehicles currently in the hands of its dealers. This is an unusual request. Only once before has the agency been petitioned to grant an exemption to motor vehicles already in existence. In 1989, Chrysler Corporation manufactured several electric vans for research purposes which, three years later, in 1992, it wished to sell or lease to a public utility in California. As the purpose of a temporary exemption is to allow a company for a limited time to engage in activities that would otherwise be in violation of the statute, the agency granted Chrysler's petition. NHTSA noted that an exemption would permit Chrysler to offer for sale, sell, introduce and deliver for introduction into interstate commerce noncomplying motor vehicles, acts otherwise prohibited (See 57 FR 27506). The fact situation is somewhat different here in that noncomplying vehicles have already been manufactured for sale and delivered for introduction into interstate commerce, in violation of 49 U.S.C. 30112(a). The agency has no authority to excuse retroactively statutory violations, and these are acts for which NHTSA has the right to seek recovery of civil penalties. However, an exemption will allow the company to generate income and its dealers to offer for sale, sell, and introduce into interstate commerce the vehicles that are currently in their possession.

The applicant requested an exemption for the maximum permissible under statute, three years. Given the fact that the company began its compliance efforts in 1993 if not earlier, the agency believes that full compliance with Standard No. 208 should be the company's regulatory priority, and is providing an exemption of two years. This, of course, does not affect the right of the applicant to petition for a renewal if compliance remains elusive.

In consideration of the foregoing, it is hereby found that compliance with the automatic restraint requirements of Standard No. 208 would cause substantial economic hardship to a company that has tried to comply with the standard in good faith, and that an exemption would be consistent with the public interest and motor vehicle safety. Accordingly, Excalibur Automobile Corporation is hereby granted NHTSA Temporary Exemption No. 95–1 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Crash Protection, expiring March 1, 1997.

**Authority:** 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: February 28, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95–5322 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–59–P

# Sunshine Act Meetings

Federal Register
Vol. 60, No. 43
Monday, March 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the FCS Building Association.

**DATE AND TIME:** The special meeting of the Board concerning the FCS Building Association will be held March 7, 1995 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's special meeting at 11:00 a.m.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

**Open Session**

*A. Approval of Minutes*

*B. Reports*

1. FCSBA Quarterly Report

Dated: March 1, 1995.

**Floyd Fithian,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 95–5546 Filed 3–2–95; 2:17 pm]

BILLING CODE 6705–01–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 March 7, 1995, from 11:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** 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**

*A. Approval of Minutes*

**Closed Session***

*A. Reports*

1. OSMO Quarterly Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: March 1, 1995.

**Floyd Fithian,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 95–5547 Filed 3–2–95; 2:17 pm]

BILLING CODE 6705–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meeting

**TIME AND DATE:** 1:00 p.m., Friday, March 10, 1995.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Final Interpretive Ruling and Policy Statement (IRPS) 95–1, Supervisory Review Committee.
2. Establishment of the Position of Ombudsman.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 95–5514 Filed 3–2–95; 12:47 pm]

BILLING CODE 7535–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 6, 1995.

A closed meeting will be held on Thursday, March 9, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 9, 1995, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 2, 1995.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95–5576 Filed 3–2–95; 3:56 pm]

BILLING CODE 8010–01–M

federal register

Monday
March 6, 1995

# Part II

## Department of Defense

### Department of Army
### Corps of Engineers

## Environmental Protection Agency

## Department of Agriculture

### Natural Resources Conservation Service

## Department of the Interior

### Fish and Wildlife Service

## Department of Commerce

### National Oceanic and Atmospheric Administration

**Federal Guidance for the Establishment, Use and Operation of Mitigation Banks; Notice**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Corps of Engineers**

**ENVIRONMENTAL PROTECTION AGENCY**

**DEPARTMENT OF AGRICULTURE**

**Natural Resources Conservation Service**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

## Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

**AGENCIES:** Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Natural Resources Conservation Service, Agriculture; Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Army Corps of Engineers (Corps), Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are proposing guidance regarding the establishment, use and operation of mitigation banks for the purpose of providing compensatory mitigation for adverse impacts to wetlands and other aquatic resources. The purpose of this guidance is to clarify the manner in which mitigation banks may be used to satisfy mitigation requirements associated with the Clean Water Act (CWA) Section 404 permit program and the wetland conservation provisions of the Food Security Act (FSA) (i.e., ''Swampbuster'' provisions). Recognizing the potential benefits mitigation banking offers for streamlining the permit evaluation process and providing more effective mitigation for authorized impacts to wetlands, the agencies encourage the establishment and appropriate use of mitigation banks in the Section 404 and ''Swampbuster'' programs.

**DATES:** Written comments must be submitted on or before April 20, 1995.

**ADDRESSES:** All comments concerning this proposed document should be submitted in writing to: Mitigation Banking Docket, Wetlands Division, Mail Code (4502F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Chowning (Corps) at (202) 272–1725; Ms. Julie Metz (Corps) at (703) 355–3065; Mr. Thomas Kelsch (EPA) at (202) 260–8795; Ms. Sandra Byrd (NRCS) at (202) 690–3501; Mr. Michael Long (FWS) at (703) 358–2183; Ms. Susan-Marie Stedman (NMFS) at (301) 713–2325.

**SUPPLEMENTARY INFORMATION:** Mitigating the harmful effects of necessary development actions on the Nation's wetlands and other aquatic resources is a central premise of Federal wetlands programs. The CWA Section 404 permit program relies on a sequential approach to mitigating these harmful effects by first avoiding unnecessary impacts, then minimizing environmental harm, and, finally, compensating for remaining unavoidable damage to wetlands and other aquatic resources through, for example, the restoration or creation of wetlands. Under the ''Swampbuster'' provisions of the FSA, farmers are required to provide mitigation to offset certain conversions of wetlands for agricultural purposes in order to maintain their program eligibility.

Mitigation banking has been defined as wetland restoration, creation, enhancement, and in exceptional circumstances, preservation undertaken expressly for the purpose of mitigating unavoidable adverse wetland losses in advance of development actions, when compensatory mitigation cannot be achieved at the development site or is not as environmentally beneficial. It typically involves the consolidation of fragmented wetland mitigation projects into one large contiguous site. Units of restored, created, enhanced or preserved wetlands are expressed as ''credits'' which may subsequently be withdrawn to offset ''debits'' incurred at a project development site.

Ideally, mitigation banks are constructed and functioning in advance of development impacts, and are seen as a way of reducing uncertainty in the CWA Section 404 permit program or the FSA ''Swampbuster'' program by having established compensatory mitigation credit available to an applicant. By consolidating compensation requirements, banks can more effectively replace lost wetland functions within a watershed, as well as provide economies of scale relating to the planning, implementation, monitoring and management of mitigation projects.

On August 23, 1993, the Clinton Administration released a comprehensive package of improvements to Federal wetlands programs which included support for the use of mitigation banks within environmentally sound limits as a means for compensating for authorized wetland impacts. At that same time, EPA and the Department of the Army issued interim guidance clarifying the role of mitigation banks in the Section 404 permit program and providing general guidelines for their establishment and use. In that document it was acknowledged that additional guidance would be developed, as necessary, following completion of the first phase of the Corps Institute for Water Resources national study on mitigation banking.

This notice responds to a need identified in the Corps national study for more detailed guidance on the policy of the Federal government regarding the establishment, use and operation of mitigation banks. The proposed guidance is based, in part, on the experiences to date with mitigation banking, as well as other environmental, economic and institutional issues identified through the Corps national study. The agencies are specifically soliciting public comment on the proposed guidance and will consider all comments submitted by the public in developing final guidance. A copy of the proposed guidance is published with this notice.

**John H. Zirschky,**

*Acting Assistant Secretary (Civil Works), Department of the Army.*

**Robert Perciasepe,**

*Assistant Administrator for Water, Environmental Protection Agency.*

**James R. Lyons,**

*Assistant Secretary, Natural Resources and Environment, Department of Agriculture.*

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.*

**Douglas K. Hall,**

*Assistant Secretary for Oceans and Atmosphere, Department of Commerce.*

## Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

### I. Introduction

#### *A. Purpose and Scope of Guidance*

This document provides policy guidance for the establishment, use and operation of mitigation banks for the purpose of providing compensatory mitigation for authorized adverse impacts to wetlands and other aquatic resources. This guidance is provided

expressly to assist Federal personnel, bank sponsors, and others in meeting the purpose and goals of Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act, the wetland conservation provisions of the Food Security Act (FSA) (i.e., ''Swampbuster''), and other applicable Federal statutes and regulations. The policies and procedures discussed herein are consistent with current requirements of the Section 10/404 regulatory program and ''Swampbuster'' provisions and are intended only to clarify the applicability of existing requirements to mitigation banking.

The policies and procedures are applicable to the establishment, use and operation of public mitigation banks, as well as privately-sponsored mitigation banks, including third party banks (e.g., entrepreneurial banks).

*B. Background*

For purposes of this guidance, mitigation banking means the restoration, creation, enhancement and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

The objective of a mitigation bank is to provide for the replacement of the chemical, physical and biological functions of wetlands and other aquatic resources which are lost as a result of authorized impacts. Using appropriate methods, the newly established functions are quantified as mitigation ''credits'' which are available for use by the bank sponsor or by other parties to compensate for adverse impacts (i.e., ''debits''). Consistent with mitigation policies established under the Council on Environmental Quality Implementing Regulations (CEQ regulations) (40 CFR part 1508.20), and the Section 404(b)(1) Guidelines (Guidelines) (40 CFR part 230), the use of credits may only be authorized for purposes of complying with Section 10/404 when adverse impacts are unavoidable In addition, for both the Section 10/404 and ''Swampbuster'' programs, credits may only be authorized when on-site compensation is either not practicable or use of a mitigation bank is environmentally preferable to on-site compensation. Prospective bank sponsors should not construe or anticipate participation in the establishment of a mitigation bank as ultimate authorization for specific projects or as excepting such projects from any applicable requirements.

Mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

1. It may be more advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation into a single large parcel or contiguous parcels when ecologically appropriate;

2. Establishment of a mitigation bank can bring together financial resources, planning and scientific expertise not practicable to many project-specific compensatory mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation that maximizes opportunities for contributing to biodiversity and/or watershed function;

3. Use of mitigation banks may reduce permit processing times for projects that qualify and provide more cost-effective compensatory mitigation opportunities;

4. Compensatory mitigation is typically implemented and functioning in advance of project impacts, thereby reducing temporal losses of aquatic functions and uncertainty over whether the mitigation will be successful in offsetting project impacts;

5. The existence of mitigation banks can contribute towards attainment of the goal for no overall net loss of the Nation's wetlands by providing applicants with opportunities to compensate for authorized impacts when mitigation might not otherwise be required.

## II. Policy Considerations

The following policy considerations provide general guidance for the establishment, use and operation of mitigation banks. This policy applies to all mitigation bank proposals submitted for approval on or after the effective date of this guidance and to those in early stages of planning or development. It is not intended that this policy be retroactive for mitigation banks that have already received agency approval. While it is recognized that individual mitigation banking proposals may vary, the fundamental precepts of this guidance should apply to all future mitigation banks.

For the purposes of Section 10/404, and consistent with the CEQ regulations, the Guidelines, and the Memorandum of Agreement Between the Environmental Protection Agency (EPA) and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, mitigation means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. Compensatory mitigation, under Section 10/404, is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of compensating for unavoidable adverse impacts. A site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources is a mitigation bank.

*A. Authorities*

This guidance is established in accordance with the following statutes, regulations, and policies. It is intended to clarify provisions within these existing authorities and does not establish any new requirements.

1. Clean Water Act Section 404 (33 USC 1344).

2. Rivers and Harbors Act of 1899 Section 10 (33 USC 403 *et seq.*).

3. Environmental Protection Agency, Section 404(b)(1) Guidelines (40 CFR part 230). Guidelines for Specification of Disposal Sites for Dredged or Fill Material.

4. Department of the Army, Section 404 Permit Regulations (33 CFR parts 320–330). Policies for evaluating permit applications to discharge dredged or fill material.

5. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404 (b)(1) Guidelines (February 6, 1990).

6. Title XII Food Security Act of 1985 as amended by the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC 3801 *et seq.*).

7. National Environmental Policy Act (42 USC 4321 *et seq.*), including the Council on Environmental Quality's implementing regulations (40 CFR parts 1500–1508).

8. Fish and Wildlife Coordination Act (16 USC 661 *et seq.*).

9. Fish and Wildlife Service Mitigation Policy (46 FR 7644–7663, 1981).

10. Magnuson Fishery Conservation and Management Act (16 USC 1801 *et seq.*).

11. National Marine Fisheries Service Habitat Conservation Policy (48 FR 53142–53147, 1983).

*B. Planning Considerations*

1. Prospectus

Prospective bank sponsors are encouraged to submit a prospectus to

the Army Corps of Engineers (Corps) or Natural Resources Conservation Service (NRCS)[1] to initiate the planning and review process by the appropriate agencies (e.g., pre-application coordination). The purpose of the prospectus is to provide information to the agencies regarding the general need for and technical feasibility of a bank, as well as its potential for providing compensatory mitigation within a particular watershed or other designated geographic area (i.e., bank service area). Formal agency involvement and review is initiated with submittal of a prospectus. The submittal of a prospectus and establishment of an approved mitigation bank in no way guarantees use of a bank to satisfy compensatory mitigation requirements of any authorized activity.

2. Goal Setting

The overall goal of a mitigation bank should be the establishment or reestablishment of a self-sustaining, functioning aquatic system, which replaces the functions and acreage of wetlands and other aquatic resources anticipated to be adversely affected within a watershed or other designated geographic area. It is desirable to set the particular objectives (i.e., determining the type and character of compensatory mitigation to be developed) for a mitigation bank in advance of site selection. The goal and objectives should be driven by the anticipated mitigation need; the site selection should support achieving the goal and objectives.

3. Site Selection

Consideration should be given to the ecological suitability of a site for achieving the goal and objectives of a bank, i.e., that it possess the physical, chemical and biological characteristics to support establishment of the desired aquatic resources and functions. Size and location of the site relative to other ecological features, hydrologic sources (including the availability of water rights), and compatibility with adjacent land uses and watershed management plans are important factors for consideration. It also is important that ecologically significant upland resources (e.g., mature forests) or cultural sites, or threatened and endangered species habitat are not compromised in the process of establishing a bank. Other factors for consideration include development trends (i.e., land use changes), habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., reestablishment of habitat corridors), water quality and floodplain management goals, and establishment of habitat for species of concern.

Banks may be sited on public or private lands. Cooperative arrangements between public and private entities to use public lands for mitigation banks may be acceptable. In some circumstances, it may be appropriate to site banks on Federal, state, tribal or locally owned resource management areas (e.g., wildlife management areas, national or state forests, public parks, recreation areas). The siting of banks on such lands may be acceptable if the internal policies of the public agency allow use of its land for such purposes, and the public agency grants approval. Mitigation credits generated by banks of this nature must be based solely on those values in the bank that are supplemental to the public program(s) already planned or in place, that is, baseline values represented by existing or already planned public programs, including preservation value, may not be counted toward bank credits.

Federally funded wetland conservation projects undertaken via separate authority and for other purposes, such as the Wetlands Reserve Program, Farmers Home Administration fee title transfers or conservation easements, and Partners for Wildlife Program, cannot be used for the purpose of generating credits within a mitigation bank.

4. Technical Feasibility

Mitigation banks should be planned and designed to be self-sustaining over time to the extent possible and pose little risk of failure. The techniques for restoring and creating wetlands and/or other aquatic resources must be carefully selected, since restoration/creation science is constantly evolving. The restoration of historic or substantially degraded wetlands and/or other aquatic resources utilizing proven techniques increases the likelihood of mitigation success and lessens the loss of valuable uplands due to wetland creation. Thus, restoration should be the first option considered when siting a bank.

In general, banks which involve complex hydraulic engineering features and/or questionable water sources (e.g., pumped) are more costly to develop, operate and maintain, and have a higher risk of failure than banks designed to function with little or no human intervention. The former situations should be avoided to the extent possible. This guidance recognizes that in some circumstances wetlands must be actively managed to ensure their viability and sustainability. Furthermore, long-term maintenance requirements may be necessary and appropriate in some cases (e.g., to maintain fire-dependent plant communities in the absence of natural fire; to control invasive exotic plant species).

Mitigation techniques should be sufficiently well understood and reliable to allow the development of detailed construction plans and specifications for review and approval. When uncertainties surrounding the technical feasibility of a proposed mitigation technique exist, appropriate arrangements (e.g., financial assurances, contingency plans, additional monitoring requirements) should be in place to increase the likelihood of success. Such arrangements may be phased out or reduced once the attainment of prescribed performance standards is demonstrated.

5. Role of Preservation

Credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource. Such augmentation may be reflected in the total number of credits available from the bank.

Consistent with existing regulations, policies and guidance, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in mitigation banks only under exceptional circumstances. Under such circumstances, preservation may be accomplished through the implementation of appropriate legal mechanisms (e.g., transfer of deed, deed restrictions, conservation easement) to protect wetlands and/or other aquatic resources, accompanied by implementation of appropriate changes in land use or other physical changes as necessary (e.g., installation of restrictive fencing).

Determining whether preservation is appropriate as the sole basis for generating credits at a mitigation bank requires careful judgment regarding a number of factors. Consideration must be given to whether wetlands and/or other aquatic resources proposed for preservation (1) perform physical or biological functions, the preservation of

[1] The Corps will typically serve as the lead agency for the establishment of mitigation banks. Bank sponsors proposing establishment of mitigation banks solely for the purpose of complying with the ''Swampbuster'' provisions of FSA should submit their prospectus to the NRCS.

which is important to the region in which the aquatic resources are located, and (2) are under demonstrable threat of loss or substantial degradation due to human activities that might not otherwise be expected to be restricted (e.g., by Section 10/404 or the FSA ''Swampbuster'' provisions). The existence of a demonstrable threat must be based on clear evidence of destructive land use changes which are consistent with local and regional land use trends and are not the consequence of actions under the control of the bank sponsor. The number of mitigation credits available from a bank that is based solely on preservation should be based on the functions that would otherwise be lost or degraded if the aquatic resources were not preserved, and the timing of such loss or degradation. As such, compensation for aquatic resource impacts will generally require a greater number of acres from a preservation bank than from a bank which is based on restoration, creation or enhancement.

6. Inclusion of Upland Areas

Credit may be given for the inclusion of upland areas occurring within a bank only to the degree that such features increase the overall ecological functioning of the bank. If such features are included as part of a bank, it is important that they receive the same protected status as the rest of the bank and be subject to the same operational procedures and requirements. An appropriate functional assessment methodology should be used to determine the manner and extent to which such features augment the functions of restored, created or enhanced wetlands and/or other aquatic resources. The presence of upland areas may increase the per-unit value of the aquatic habitat in the bank, but upland areas are not directly counted as mitigation credits.

7. Mitigation Banking and Watershed Planning

Mitigation banks should be planned and developed to address resource needs within a particular watershed. Moreover, decisions regarding the location and uses of a mitigation bank, as well as the type of wetlands and/or other aquatic resources to be restored, created, enhanced or preserved may often be made within the context of ecological objectives set for the watershed. Watershed planning efforts often identify categories of activities having minimal adverse effects on the aquatic ecosystem which could be authorized under a general permit. In order to reduce potential cumulative effects of such activities, it may be appropriate to offset these types of impacts through the use of a mitigation bank established in conjunction with a watershed plan.

*C. Establishment of Mitigation Banks*

1. Mitigation Banking Instruments

All mitigation banks need to have a banking instrument as documentation of agency concurrence on the objectives and administration of the bank. The banking instrument should describe in detail the physical and legal characteristics of the bank, and how the bank will be established and operated. The banking instrument will be signed by the bank sponsor and the concurring regulatory and resource agencies represented on the Mitigation Bank Review Team (section II.C.2.). The following information should be addressed, as appropriate:

a. Bank goals and objectives;
b. Ownership of bank lands;
c. Bank size and classes of wetlands and/or other aquatic resources proposed for inclusion in the bank;
d. Description of baseline conditions;
e. Geographic service area;
f. Wetland classes or other aquatic resource impacts suitable for compensation;
g. Methods for determining credits and debits;
h. Accounting procedures;
i. Performance standards for determining credit availability and bank success;
j. Reporting protocols and monitoring plan;
k. Contingency and remedial actions and responsibilities;
l. Financial assurances;
m. Compensation ratios;
n. Provisions for long-term management and maintenance.

In cases where initial establishment of the mitigation bank involves a discharge into waters of the United States requiring Section 10/404 authorization, the banking instrument will be made part of the Department of the Army (DA) permit. The permit application to establish a bank will be evaluated by the Corps on its own merits pursuant to Section 10/404 policies and procedures. As such, preparation of a banking instrument should not alter the normal permit evaluation process timeframes. A bank sponsor may proceed with activities for the construction of a bank subsequent to receiving the DA authorization. It should be noted, however, that a bank sponsor who proceeds in the absence of a banking instrument does so as his/her own risk.

In cases where the mitigation bank is established pursuant to the FSA, the banking instrument will be included in the plan developed or approved by NRCS and the Fish and Wildlife Service (FWS).

2. Agency Roles and Coordination

Collectively, the signatory agencies to the banking instrument will comprise the Mitigation Bank Review Team (MBRT). Representatives from the Corps, EPA, FWS, National Marine Fisheries Service (NMFS), and NRCS, as appropriate given the projected use for the bank, should typically comprise the MBRT. In addition, it is appropriate for representatives from state, tribal and local regulatory and resource agencies to participate where an agency has authorities and/or mandates directly affecting or affected by the establishment, use or operation of a bank. No agency is required to sign a banking instrument; however, in signing a banking instrument, an agency agrees to comply with the terms of that instrument.

The Chair of the MBRT will be the Corps, except in cases where the bank is proposed solely for the purpose of complying with the FSA, in which case NRCS will be the MBRT Chair. Either agency may delegate that responsibility to another Federal, state, tribal or local agency, as appropriate.

The primary role of the MBRT is to facilitate the establishment of mitigation banks through the development of mitigation banking instruments. Because of the different authorities and responsibilities of each agency represented on the MBRT, there is a benefit in achieving agreement up front. For this reason, the MBRT will strive to obtain consensus [2] on its actions. The MBRT will review and reach consensus on the banking instrument and final plans for the restoration, creation, enhancement, and/or preservation of wetlands and other aquatic resources. Once the banking instrument has been signed, the MBRT will not typically be involved in the operation of a bank on a project-specific basis. Periodically, the MBRT will review monitoring and accounting reports. In the event a bank

[2] The term consensus as defined herein, is a process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. Under consensus, agreements or decisions are made without voting. An agreement is reached through a process of gathering information and viewpoints, discussion, analysis, persuasion, a combination or synthesis of the proposals and/or development of totally new solutions that are acceptable to the group. The goal of consensus is to reach an agreement or decision with which everyone can agree, but not necessarily unanimity. A consensus agreement is a recognition by a group that it has reached the best achievable solution for the parties involved.

sponsor proposes remedial actions, or an agency on the MBRT considers remedial actions to be necessary, the MBRT will review and reach consensus on the specific remedial measures to be implemented at a bank.

Consistent with its authorities under Section 10/404, the Corps is responsible for authorizing use of a particular mitigation bank on a project-specific basis and determining the number and availability of credits required to compensate for proposed impacts in accordance with the terms of the banking instrument. Decisions rendered by the Corps must fully consider review agency comments submitted as part of the permit evaluation process. Similarly, the NRCS, in consultation with the FWS, will make the final decision pertaining to the withdrawal of credits from banks as appropriate mitigation pursuant to FSA.

3. Role of the Bank Sponsor

The bank sponsor is responsible for the preparation of the banking instrument in consultation with the MBRT. The bank sponsor is also responsible for the overall operation and management of the bank in accordance with the terms of the banking instrument, including the preparation and distribution of monitoring reports and accounting statements/ledger.

4. Dispute Resolution Procedure

The MBRT will work to reach consensus on its actions in accordance with this guidance. It is anticipated that all issues will be resolved by the MBRT in this manner.

a. *Development of the banking instrument.* During the development of the banking instrument, if the agency representatives on the MBRT cannot reach consensus on the content of the banking instrument within a reasonable timeframe, or if an agency representative considers that a particular decision raises concern regarding the application of existing policy or procedures, an agency may request the issue be reviewed by a higher level within each agency. If resolution is still not achieved, any agency(ies) may initiate interagency review through written notification to, as appropriate, the Corps District Engineer, EPA Regional Wetlands Division Director, FWS Field Supervisor, NMFS Habitat Coordinator, NRCS State Conservationist and corresponding management levels within other agencies represented on the MBRT. Said notification will describe the issue in sufficient detail and provide recommendations for resolution. Within 20 days, the District Engineer or State Conservationist (as appropriate), or an appropriate designee, will lead necessary discussions to achieve interagency concurrence on the issue of concern, and forward documentation of the resolution to the MBRT Chair for distribution to the other MBRT member agencies. The bank sponsor may also request the District Engineer or State Conservationist review actions taken to develop the banking instrument if the sponsor believes that inadequate progress has been made on the instrument by the MBRT.

b. *Application of the banking instrument.* As previously stated, the Corps and NRCS are responsible for making final decisions on a project-specific basis regarding the use of a mitigation bank for purposes of Section 10/404 and FSA, respectively. In the event an agency on the MBRT is concerned that a proposed use may not comply with the terms of the banking instrument, that agency may raise the issue to the attention of the Corps or NRCS through the permit evaluation process. In order to facilitate timely and effective consideration of agency comments, the Corps or NRCS, as appropriate, will advise the MBRT agencies of a proposed use of a bank and initiate discussion as necessary. The Corps will fully consider comments provided by the review agencies regarding mitigation as part of the permit evaluation process. The NRCS will consult with FWS in making its decisions pertaining to mitigation.

If, in the view of an agency on the MBRT, an issued permit or series of permits reflects a pattern of concern regarding the application of the terms of the banking instrument, that agency may initiate review of the concern by the full MBRT through written notification to the MBRT Chair. The MBRT Chair will convene a meeting of the MBRT, or initiate another appropriate forum for communication, typically within 10 days upon receipt of notification, to resolve concerns. If resolution is not reached, an agency may request that the issue be reviewed by higher levels within each agency consistent with the procedures described in the preceding paragraph. Invoking this dispute resolution procedure to address concerns regarding the application of a banking instrument will not delay any permit decision pending before the authorizing agency (i.e., Corps or NRCS).

This guidance does not affect in any way the Corps statutory authorities and responsibilities under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. The ability of an agency to elevate a particular permit or policy issue in accordance with the Section 404(q) Memoranda of Agreement between the Department of the Army and the Federal advisory agencies will not be limited in any way by this guidance. Similarly, EPA's authority to deny or restrict authorization of a CWA permit in accordance with Section 404(c) will not be limited in any way by this guidance.

*D. Criteria for Use of a Mitigation Bank*

1. Project Applicability

All activities regulated under Section 10/404 may be eligible to use a mitigation bank as compensation for unavoidable impacts to wetlands and/or other aquatic resources in so far as the use complies with the terms of the banking instrument. Mitigation banks established for FSA purposes may be debited only in accordance with the mitigation and replacement provisions of 7 CFR part 12.

Mitigation banks may also be used to compensate for adverse impacts to wetlands and/or other aquatic resources authorized under other resource protection programs such as state regulatory programs. In no case may the same credits be used to compensate for more than one activity; however, the same credits may be used to compensate for an activity which requires authorization under more than one program.

2. Relationship to Mitigation Requirements

For purposes of Section 10/404, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to aquatic resources, prior to authorization to use a particular mitigation bank. Remaining unavoidable impacts must be compensated to the extent appropriate and practicable. For both the Section 10/404 and ''Swampbuster'' programs, requirements for compensatory mitigation may be satisfied through the use of mitigation banks when either on-site compensation is not practicable or use of the mitigation bank is environmentally preferable to on-site compensation.

It is important to emphasize that applicants should not expect that establishment of, or participation in, a mitigation bank will ultimately lead to a determination of compliance with applicable mitigation requirements (i.e., Section 404(b)(1) Guidelines or FSA Manual), or as excepting projects from any applicable requirements.

3. Geographic Limits of Applicability

The service area of a mitigation bank is the designated area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources. Designation of the service area should be based on consideration of hydrologic, edaphic and biotic criteria, and be stipulated in the banking instrument.

The geographic extent of a service area should be guided by the cataloging unit of the ''Hydrologic Unit Map of the United States'' (USGS, 1980) and ecoregion of the ''Ecoregions of the United States'' (James M. Omernik, EPA, 1986) or section of the ''Descriptions of the Ecoregions of the United States'' (Robert G. Bailey, USDA, 1980). It may be appropriate to use other hydrologic and biotic classification and mapping systems developed at the state or regional level for the purpose of specifying bank service areas, when such systems compare favorably in their objectives and level of detail. In the interest of integrating banks with other resource management objectives, bank service areas may encompass larger watershed areas if the designation of such areas is supported by local or regional management plans (e.g. Special Area Management Plans, Advance Identification), State Wetland Conservation Plans or other Federally sponsored or recognized watershed management plans.

4. Use of a Mitigation Bank vs. On-Site Mitigation

As indicated in 1990 Memorandum of Agreement on mitigation between the EPA and DA, compensatory mitigation should be undertaken in areas adjacent or contiguous to the site of the aquatic resource impacts when practicable and environmentally preferable. This preference for on-site mitigation is established because on-site mitigation often has greater potential for compensating for particular aquatic functions. For example, on-site mitigation may be the most appropriate option for compensating for local flood control functions, habitat for a species or population with a very limited geographic range or narrow environmental requirements, or where local water quality concerns dominate.

The preference for on-site mitigation, however, should not preclude the use of a mitigation bank when there is no practicable opportunity for on-site compensation, or when use of a bank is environmentally preferable to on-site compensation. In making the latter determination, careful consideration must be given to wetland functions, landscape position, affected species populations at the impact and mitigation bank sites, and potential on-site compensation areas. In general, it may be desirable to provide compensation for minor aquatic resource impacts through consolidation in a well-managed bank. There may also be circumstances warranting a combination of on-site and off-site (i.e., bank) mitigation to compensate for losses.

With respect to larger aquatic resource impacts, use of a bank may be appropriate if it is capable of replacing essential physical and/or biological functions of the aquatic resources which are expected to be lost or degraded and is environmentally preferable to on-site compensatory mitigation. Moreover, for projects that might otherwise cause or contribute to significant degradation (40 CFR part 230.10(c)), a bank may only be used when it is demonstrated that use of the bank will prevent or replace the lost functions that give rise to the significant degradation finding, and where a reasonable assurance of success is provided.

5. In-Kind vs. Out-Of-Kind Mitigation Determinations

In the interest of achieving functional replacement, in-kind compensation of aquatic resource impacts should generally be required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g., of greater ecological value to a particular region). However, non-tidal wetlands should typically not be used to compensate for the loss or degradation of tidal wetlands, nor vice-versa. Decisions regarding out-of-kind mitigation are typically made on a case-by-case basis during the permit evaluation process. The banking instrument may identify circumstances in which it is environmentally desirable to allow out-of-kind compensation within the context of a particular mitigation bank. Mitigation banks developed as part of an area-wide management plan to address a specific resource objective (e.g. restoration of a particularly vulnerable or valuable wetland habitat type) may be such an example.

6. Timing of Credit Withdrawal

The number of credits available for withdrawal (i.e., debiting) should generally be commensurate with the level of aquatic functions attained at a bank at the time of debiting. The level of function may be determined through the application of performance standards tailored to the specific restoration, creation or enhancement activity at the bank site or through the use of an appropriate functional assessment methodology.

The success of a mitigation bank with regard to its capacity to establish a healthy and fully functional aquatic system relates directly to both the ecological and financial stability of the bank. Since financial considerations are particularly critical in early stages of bank development, it may be appropriate to allow limited debiting based upon a projected level of aquatic functions at a bank (e.g. 15% of the total credits projected for the bank at maturity). However, it is the intent of this policy to ensure that those actions necessary for the long-term viability of a mitigation bank be accomplished prior to any debiting of the bank. In this regard, the following requirements should be satisfied prior to debiting: (1) Banking instrument and final mitigation plans have been approved; (2) bank site has been secured; and (3) appropriate financial assurances have been established. In addition, initial physical and biological improvements should be completed within the first full growing season following initial debiting of a bank. The temporal loss of functions associated with the debiting of projected credits may require higher compensation ratios. Further debiting of the bank should not occur until the allocated projected credits have accrued and additional credits have accrued to match proposed debiting.

Credits based solely on the preservation of existing aquatic resources may become available for debiting immediately upon implementation of appropriate legal protection accompanied by appropriate changes in land use or other physical changes, as necessary.

7. Crediting/Debiting/Accounting Procedures

Credits and debits are the terms used to designate the units of trade (i.e., currency) in mitigation banking. Credits represent the accrual or attainment of aquatic functions at a bank; debits represent the loss of aquatic functions at an impact or project site. Credits are debited from a bank when they are used to offset aquatic resource impacts (e.g. for the purpose of satisfying Section 10/404 permit or FSA requirements).

An appropriate functional assessment methodology (e.g. Habitat Evaluation Procedures, hydrogeomorphic approach to wetlands functional assessment) acceptable to all signatories should be used to assess wetland and/or other aquatic resource restoration, creation

and enhancement efforts within a mitigation bank, and to quantify the amount of available credits. The range of functions to be assessed will depend upon the assessment methodology identified in the banking instrument. The same methodology should be used to assess both credits and debits. If an appropriate functional assessment methodology is impractical to employ, credits and debits can be based on simple indices (e.g. acres) of various classes of wetlands and/or other aquatic resources (e.g., Cowardin et al, 1979, as modified for National Wetland Inventory mapping conventions). Regardless of the method employed, credits should be based on the difference between site conditions under the with- and without-bank scenarios.

The bank sponsor should be responsible for assessing the development of the bank and submitting appropriate documentation of such assessments to the authorizing agency(ies) and members of the MBRT for review. Alternatively, functional assessments may be conducted by a team representing involved resource and regulatory agencies and other appropriate parties.

Bank sponsors will establish and maintain an accounting system (i.e., ledger) which documents the activity of all mitigation bank accounts. Each time an approved debit/credit transaction occurs at a given bank, the bank sponsor will submit a statement to each member agency of the MBRT. The bank sponsor will also generate an annual ledger report for all mitigation bank accounts for similar distribution.

Credits may be sold to third parties. The cost of mitigation credits to a third party is determined by the bank sponsor.

8. Party Responsible for Bank Success

The bank sponsor is responsible for assuring the success of the restoration, creation, enhancement and preservation activities at the mitigation bank. This responsibility must be clearly documented in the banking instrument and in any authorization approving the use of the bank as compensatory mitigation. Where authorization under Section 10/404 and/or FSA is necessary to establish the bank, the DA permit or NRCS plan should be conditioned accordingly to ensure that provisions of the banking instrument are enforceable. In circumstances where establishment of a bank does not require such authorization, adequate mechanisms (i.e., legal and financial assurances) need to be in place to ensure that provisions of the banking instrument are enforceable.

*E. Long-Term Management, Monitoring and Remediation*

1. Bank Operational Life

The operational life of a bank refers to the period during which the terms and conditions of the banking instrument are applicable, and signatories of the instrument are responsible for carrying out its provisions. With the exception of arrangements for the long-term management and protection in perpetuity of the bank, the operational life of a mitigation bank terminates at the point when (1) compensatory mitigation credits have been exhausted or banking activity is voluntarily terminated with written notice by the bank sponsor provided to the Corps or NRCS and other members of the MBRT, and (2) it has been determined that the debited bank is functionally mature and/or self-sustaining to the degree specified in the banking instrument.

2. Long-Term Management and Protection

Mitigation banks should be protected in perpetuity with appropriate real estate arrangements. In exceptional circumstances, real estate arrangements may be approved which dictate finite protection for a bank. However, in no case should finite protection extend for a lesser time than the duration of project impacts for which the bank is being used to provide compensation.

All banks must be protected by legal instruments which effectively prevent harmful activities (i.e., incompatible uses [3]) that would jeopardize their continued conservation purpose. Acceptable instruments are deed restrictions, conservation easements or other enforceable legal mechanisms.

Banking instruments should identify the entity responsible for the management of the bank beyond its operational life as a means to assure the conservation purpose of the bank. The bank sponsor is responsible for securing adequate funds for the operation and maintenance of the bank during its operational life, as well as for management of the bank beyond its operational life, as necessary. Where needed, the acquisition and protection of water rights should be secured by the bank sponsor and documented in the banking instrument.

3. Monitoring Requirements

The bank sponsor is responsible for monitoring the mitigation bank in accordance with monitoring provisions identified in the banking instrument to determine the level of success and identify problems requiring remedial action. Monitoring provisions need to be set forth in the banking instrument and based on scientifically sound performance standards prescribed for the bank. Monitoring should be conducted at time intervals appropriate for the particular project type and until such time that the authorizing agency(ies), in consultation with the MBRT, are confident that success is being achieved (i.e., performance standards are attained). Annual monitoring reports should be submitted to the authorizing agency(ies) and members of the MBRT.

4. Remedial Action

The banking instrument should stipulate the procedures for identifying and implementing remedial measures at a bank, or any portion thereof. Remedial measures should be based on information contained in the monitoring reports (i.e., the attainment of prescribed performance standards), as well as site inspections. The need for remediation will be determined by the authorizing agency(ies) in consultation with the MBRT and bank sponsor.

5. Financial Assurances

The bank sponsor is responsible for securing sufficient funds to cover contingency actions in the event of bank default or failure. Accordingly, banks posing a greater risk of failure and where credits have been debited, should have comparatively higher financial sureties in place, than those where the likelihood of success is more certain. In addition, the bank sponsor is responsible for securing adequate funding to monitor and maintain the bank throughout its operational life, as well as beyond the operational life if not self-sustaining. Total funding requirements should reflect realistic cost estimates for monitoring, long-term maintenance, contingency and remedial actions.

Financial assurances may be in the form of performance bonds, irrevocable trusts, escrow accounts, casualty insurance, or other approved instruments. Such assurances may be phased-out or reduced, once it has been demonstrated that the bank is functionally mature and/or self-

[3] For example, certain silvicultural practices (e.g. clear cutting and/or harvests on short-term rotations) may be incompatible with the objectives of a mitigation bank. In contrast, silvicultural practices such as long-term rotations, selective cutting, maintenance of vegetation diversity, and undisturbed buffers are more likely to be considered a compatible use.

sustaining (in accordance with performance standards).

*F. Other Considerations*

1. In-Lieu-Fee Mitigation Arrangements

For purposes of this guidance, in-lieu-fee, fee mitigation, or other similar arrangements, wherein funds are paid to a natural resource management entity for implementation of either specific or general wetland or other aquatic resource development projects, are not considered to meet the definition of mitigation banking because they do not typically provide compensatory mitigation in advance of project impacts. Moreover, such arrangements do not typically provide a clear timetable for the initiation of mitigation efforts leaving the potential for project impacts to go unmitigated for a significant time period. The Corps, in consultation with the other agencies, may find there are some exceptional circumstances where such arrangements are appropriate. In such cases, a formal agreement between the sponsor and the agencies, similar to a banking instrument, is necessary to define the limited circumstances and conditions under which its use is considered appropriate.

2. Special Considerations for ''Swampbuster''

**Note to readers:** Current FSA legislation limits the extent to which mitigation banking can be used for FSA purposes. FSA requires that mitigation be conducted on prior-converted cropland as opposed to farmed wetlands or other degraded wetland systems. If this legislation is not modified to be consistent with the mitigation provisions commonly used by other wetland regulatory programs, including the Section 10/404 program, then the final mitigation banking guidance will be appropriately annotated to identify the FSA constraints.

**III. Definitions**

For the purposes of this guidance document the following terms are defined:

A. Bank sponsor. Any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

B. Compensatory mitigation. For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidable and minimization has been achieved.

C. Creation. The establishment of a wetland or other aquatic resource where one did not formerly exist.

D. Credit. A unit of measure representing the accrual or attainment of aquatic functions at a mitigation bank.

E. Debit. A unit of measure representing the loss of aquatic functions at an impact or project site.

F. Enhancement. Activities conducted in existing wetlands or other aquatic resources to achieve specific management objectives or provide conditions which previously did not exist, and which increase one or more aquatic functions. Enhancement may involve trade-offs between aquatic resource structure, functions, and values; a positive change in one function may result in negative effects to other functions.

G. Mitigation. For purposes of Section 10/404 and consistent with the Council on Environmental Quality regulations, the Section 404(b)(1) Guidelines and the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, mitigation means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

H. Mitigation bank. A mitigation bank is a site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. For purposes of Section 10/404, use of a mitigation bank may only be authorized when impacts are unavoidable.

I. Mitigation Bank Review Team (MBRT). An interagency group of Federal, state, tribal, and/or local regulatory and resource agency representatives which are signatory to a banking instrument and oversee the establishment, use and operation of a mitigation bank.

J. Practicable. Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

K. Preservation. The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the aquatic ecosystem.

L. Restoration. Re-establishment of previously existing wetland or other aquatic resource character and function(s) at a site where they have ceased to exist, or exist only in a substantially degraded state.

M. Service area. The service area of a mitigation bank is the designated area (e.g., watershed, county) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources.

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Monday
March 6, 1995

# Part III

# Department of Transportation

## Federal Transit Administration

**49 CFR Parts 653 and 654**

**Prevention of Prohibited Drug Use and Alcohol Misuse in Transit Operations; Final Rules**

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 653**

**[Docket No 92–H]**

**RIN 2132–AA37**

## Prevention of Prohibited Drug Use in Transit Operations

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

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Federal Transit Administration (FTA) is making technical amendments to its anti-drug rule to correct a citation, add words that inadvertently had been omitted, redesignate a provision, and clarify portions of the preamble discussion of the rule. This rule is intended to clarify the existing rule.

**DATES:** This rule is effective March 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nancy M. Zaczek, Attorney-Advisor for Legislation and Rulemakings, Office of the Chief Counsel, FTA, 400 7th Street SW, Washington DC 20590. (202) 366–4011. Information may also be obtained from Judy Meade or Rhonda Crawley of the Office of Safety and Security, Federal Transit Administration, same address. (202) 366–2896.

**SUPPLEMENTARY INFORMATION:** FTA recipients and other interested parties may access this rule through the FTA's Transit Safety and Security Bulletin Board using a microcomputer and a modem. The telephone number for the Bulletin Board is 1–800–231–2061. The Bulletin Board is a user-friendly, menu-driven system with information accessible seven days a week, twenty-four hours a day. Once registration is completed, interested parties may access this and other regulations.

To obtain additional information regarding access to the Bulletin Board, please contact the Operator, at (617) 494–2108, or leave a message on the Message Board of the Bulletin Board.

The FTA is making the following technical amendments to its anti-drug rule.

### Applicability—Commuter Railroads and CDL Holders

The applicability provision, section 653.5, clarifies which Department of Transportation (DOT) drug and alcohol testing program covers Commercial Drivers License (CDL) holders who work for commuter railroads. Three DOT agencies are involved in this issue: FTA, which funds commuter railroads; the Federal Railroad Administration (FRA), which regulates railroads, including commuter railroads; and the Federal Highway Administration (FHWA), which requires CDL holders to be tested for prohibited drugs and the misuse of alcohol. Under the FTA's final rule, to avoid jurisdictional problems, commuter railroads that receive FTA funds are to comply with FRA's drug and alcohol regulation. Because the FRA regulation only covers hours-of-service employees, however, there remains a question as to which agency's drug and alcohol program covers CDL holders who work for a commuter railroad. This rule clarifies that it is FHWA's regulation that covers such CDL holders.

We also note that the FRA hours-of-service classification system does not include the same kinds of workers covered under FTA's rules; for example, armed security personnel are covered by FTA's rules but not FRA's. Because FTA in its rule has delegated its authority to require commuter railroads to implement a drug and alcohol testing program to FRA, commuter railroad workers who are not safety-sensitive under FRA's rule are not subject to testing, even though they would be if they were subject to FRA's rules.

Section 653.5 is changed to correct a citation error in a reference to the regulations of the United States Coast Guard. The citation now reads 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

### Definitions

The definition of the term ''disabling damage'' is changed to be consistent with the definition used by the Federal Highway Administration, and is now defined independently of the term ''accident.''

The definition of ''large operator'' is changed to add the word ''urbanized,'' which inadvertently was omitted. Thus, a large operator operates primarily in an urbanized area of 200,000 or more in population.

A parallel change is made to the definition of ''small operator,'' which operates primarily in a nonurbanized area or in an urbanized area of less than 200,000 in population. These changes are consistent with the way the Federal Transit Administration administers its grant programs.

The definition of ''safety-sensitive function'' is changed, at subsection (4), to clarify that the rule excludes from coverage maintenance contractors working for recipients or small operators primarily serving an area of less than 50,000 in population, regardless of whether they receive section 18 or section 3 funding.

The definition of ''vehicle'' is changed to add, in the category of ''mass transit vehicle,'' certain vehicles used for services ancillary to mass transportation. The definition of a mass transit vehicle thus now includes not only buses and vans, but also nonrevenue service commercial motor vehicles and vehicles used by armed security personnel.

### Starting Date for Drug Testing Programs

Section 653.13 makes a conforming change in the implementation section of the rule to reflect the addition of the word ''urbanized'' to the definition of large operator.

### Referral, Evaluation, and Treatment

Section 653.37(a) is changed to add the word ''or,'' which clarifies that an employee who either refuses to submit to a drug test or has a verified positive drug test result must be advised of the resources available to him or her in evaluating and resolving problems associated with prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

### Supervisors Acting as a Collection Person

The reasonable suspicion testing provision, section 653.43, specifically prohibited a supervisor from acting as a collection site person for covered employees under his or her direct supervision. This provision, however, was misplaced; it was our intention to prohibit a direct supervisor from acting as a collection site person for any of the tests required under the rule. Accordingly, we have redesignated section 653.43(c) as section 653.65.

### Post-Accident Testing

Sections 653.45(a)(1), (a)(2)(i), and (a)(2)(ii) are amended to change the phrase ''on duty in,'' to ''operating.'' The provision as drafted required the testing of any safety-sensitive employee on duty in a revenue service vehicle when an accident occurred. The rule, however, was not meant to use the same standard for both vehicle operators and other covered employees who happen to be in the vehicle at the time of the accident. Thus, the mass transit vehicle operator must be tested if an accident has occurred and he or she has received a citation from a State or local law enforcement official. (In a Notice of Proposed Rulemaking published in the **Federal Register** on February 6, 1995, at 60 FR 7169, the FTA seeks comment on whether this citation requirement should be deleted.) We note that to test

other covered employees, the employer must determine whether that employee contributed to the accident, using the best information available at the time of the decision.

**Random Testing Rate**

On December 2, 1994, FTA changed section 653.47 by, among other things, adopting a performance-based random drug testing rate. For more information on these changes, see 59 FR 62217–62231.

**Certification of Compliance**

On October 12, 1994, the FTA published a **Federal Register** Notice, at 59 FR 51793, entitled ''Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements.'' In the Notice, FTA compiled a complete listing and the full text of the certifications and assurances necessary to receive financial assistance from the Federal Transit Administration. Instead of submitting a variety of certifications and assurances with each grant application, the grant applicant and its attorney certify compliance with all of the certifications and assurances relevant to any and all grants for which the grant applicant wishes to apply in fiscal year 1995 by signing the single Signature Page, attached to the Notice at 59 FR 51813. The Notice, which will be updated and republished annually for use in future fiscal years, includes a certification of compliance with the FTA drug and alcohol testing program. Accordingly, we are deleting as unnecessary the sample certification in the rule.

**Retention of Records**

The preamble discussion of this topic contained an error; specifically, it stated in Subpart E, paragraph A, at 59 FR 7587, that ''[t]he rule provides three separate record retention periods for different types of records—five years, three years, and one year.'' Actually, records must be retained for either five years, *two* years, or one year. The regulatory text, however, is accurate, and remains unchanged.

**Executive Order 12612**

We inadvertently stated in this paragraph, at 59 FR 7589, that FTA was not preempting Indian tribal law. Elsewhere in the preamble, however, we discussed this issue at length and concluded that FTA is preempting Indian tribal law under the standard developed by the Ninth Circuit in *Donovan* v. *Coeur d'Alene Tribal Farm*, 751 F. 2d 1113, 1116 (9th Cir. 1985). There is a comprehensive discussion of this issue in the **Federal Register,** published on February 15, 1994, at 59 FR 7541, 7549, and 7581.

**List of Subjects in Part 653**

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety and Transportation.

For the reasons set forth in the preamble, the FTA amends Title 49, Code of Federal Regulations, part 653 as follows:

1. The authority for part 653 continues to read as follows:

**Authority:** 49 U.S.C. 5331; 49 CFR 1.51.

## PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

**§ 653.5 [Amended]**

a. Paragraph (b) of § 653.5 is amended by removing ''part 219'' and adding ''parts 219 and 382, as appropriate''.

2. The note to § 653.5 is amended by changing the phrase ''and 6'' to the phrase ''and 16''.

**§ 653.7 [Amended]**

3. In § 653.7, the definition of *accident* is amended in paragraph (3) by removing the period at the end of the first sentence and adding a semicolon; and by removing the second and third sentences.

4. The definition of *large operator* is amended by adding the word ''urbanized'' after the word ''an'' and before the word ''area''.

5. The definition of *safety-sensitive function* is amended in paragraph (4) by adding the words ''section 3 funding and is in an area of less than 50,000 in population or'' after the word ''receives'' and before the word ''section''.

6. The definition of *small operator* is amended by removing the words ''in an area'' and adding in their place the words ''in a nonurbanized area or in an urbanized area.''

7. The definition of *vehicle* is amended by adding the words ''or for ancillary services'' after the word ''transportation'' and before the period.

8. In § 653.7 a new definition following the definition of ''covered employee'' is added as follows:

**§ 653.7 [Definitions]**

* * * * *

*Disabling damage* means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

* * * * *

**§ 653.13 [Amended]**

9. Section 653.13(a) is amended by adding the word ''primarily'' after the word ''operating'' and before the word ''in'' and by adding the word ''urbanized'' after the word ''an'' and before the word ''area''.

10. Section 653.13(b) is amended by removing the words ''operating in an area'' and adding in their place the words ''operating primarily in a nonurbanized area or in an urbanized area''.

**§ 653.37 [Amended]**

11. Section 653.37(a) is amended by adding the word ''or'' after the word ''result'' and before the word ''refuses''.

**§ 653.43 [Amended]**

12. Section 653.43(c) is redesignated as *§ 653.65, Supervisor acting as collection site person,* in subpart D.

**§ 653.45 [Amended]**

13. Section 653.45(a)(1) is amended by removing the phrase ''on duty in'' and adding in its place the word ''operating''.

14. Section 653.45(a)(2)(i) is amended by removing the phrase ''on duty in'' and adding the word ''operating'' in its place.

15. Section 653.45(a)(2)(ii) is amended by removing the phrase ''on duty in'' and adding the word ''operating'' in its place.

*Appendix A to Part 653 [Removed and Reserved]*

16. Appendix A to Part 653, Sample Certification of Compliance, is removed and reserved.

Date Issued: February 27, 1995.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 95–5177 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–57–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 654**

**[Docket No. 92–I]**

**RIN 2132–AA38**

## Prevention of Alcohol Misuse in Transit Operations

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

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Federal Transit Administration (FTA) is making some minor and technical amendments to its alcohol rule to correct a citation, add words that inadvertently had been omitted, and clarify portions of the preamble discussion of the rule. This rule is intended to clarify the existing rule.

**DATES:** This rule is effective March 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nancy M. Zaczek, Attorney for Legislation/Rulemakings, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street SW., Washington, DC 20590; 202–366–4011. Information may also be obtained from Judy Meade or Rhonda Crawley of the Office of Safety and Security, Federal Transit Administration, same address; 202–366–2896.

**SUPPLEMENTARY INFORMATION:** FTA recipients and other interested parties may access this rule through the FTA's Transit Safety and Security Bulletin Board using a microcomputer and a modem. The telephone number for the Bulletin Board is 1–800–231–2061. The Bulletin Board is a user-friendly, menu-driven system with information accessible seven days a week, twenty-four hours a day. Once registration is completed, interested parties may access this and other regulations.

To obtain additional information regarding access to the Bulletin Board, please contact the Operator, at (617) 494–2108, or leave a message on the Message Board of the Bulletin Board.

The FTA is making the following technical amendments to its alcohol rule.

### Applicability—Commuter Railroads and CDL Holders

The applicability provision, section 654.3, clarifies which Department of Transportation (DOT) drug and alcohol testing program covers Commercial Drivers License (CDL) holders who work for commuter railroads. Three DOT agencies are involved in this issue: FTA, which funds commuter railroads; the Federal Railroad Administration (FRA), which regulates railroads, including commuter railroads; and the Federal Highway Administration (FHWA), which requires CDL holders to be tested for prohibited drugs and the misuse of alcohol. Under the FTA's final rule, to avoid jurisdictional problems, commuter railroads that receive FTA funds are to comply with FRA's drug and alcohol regulation. Because the FRA regulation only covers hours-of-service employees, however, there remains a question as to which agency's drug and alcohol program covers CDL holders who work for a commuter railroad. This rule clarifies that FHWA's regulation covers such CDL holders.

We also note that the FRA hours-of-service classification system does not include the same kinds of workers covered under FTA's rules; for example, armed security personnel are covered by FTA's rules but not FRA's. Because FTA in its existing rule has delegated its authority to require commuter railroads to implement a drug and alcohol testing program to FRA, commuter railroad workers who are not safety-sensitive under FRA's rule are not subject to testing, even though they would be if they were subject to FTA's rules.

Also, section 654.3 is changed to correct a citation error in a reference to the regulations of the United States Coast Guard. The citation should read 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

### Definitions

The definition of the term ''disabling damage'' is changed to be consistent with the definition used by the Federal Highway Administration, and is now defined independently of the term ''accident.''

The definition of ''large operator'' is changed to add the word ''urbanized,'' which inadvertently was omitted. Thus, a large operator operates primarily in an urbanized area of 200,000 or more in population.

A parallel change is made to the definition of ''small operator,'' which operates primarily in a nonurbanized area or in an urbanized area of less than 200,000 in population. These changes are consistent with the way the Federal Transit Administration administers its grant programs.

The definition of ''safety-sensitive function'' is changed, at subsection (4), to clarify that the rule excludes from coverage maintenance contractors working for recipients or small operators primarily serving an area of less than 50,000 in population, regardless of whether they receive section 18 or section 3 funding.

The definition of ''vehicle'' is changed to add, in the category of ''mass transit vehicle,'' certain vehicles used not only for mass transportation, but also for services ancillary to mass transportation. The definition of a mass transit vehicle thus now includes not only buses and vans, but also non-revenue service commercial motor vehicles and vehicles used by armed security personnel.

### Starting Date for Alcohol Testing Programs

Section 654.15 makes a conforming change in the implementation section of the rule to reflect the addition of the word ''urbanized'' to the definition of large operator.

### Post-Accident Testing

Sections 654.33(a)(1), (a)(2)(i), and (a)(2)(ii) are amended to change the phrase ''on duty in,'' to ''operating.'' The provision, as drafted, required the testing of any safety-sensitive employee on duty in a revenue vehicle when an accident occurred. The rule, however, was not meant to use the same standard for both vehicle operators and other covered employees who happen to be in the vehicle at the time of the accident. Thus, the mass transit vehicle operator must be tested if an accident has occurred and he or she has received a citation from a State or local law enforcement official. (In a Notice of Proposed Rulemaking published in the **Federal Register** on February 6, 1995, at 60 FR 7169, the FTA seeks comment on whether this citation requirement should be deleted.) We note that to test other covered employees the employer must determine whether that employee contributed to the accident, using the best information available at the time of the decision.

### Supervisor Acting as a Breath Alcohol Technician

Section 654.45 is added to include a prohibition against the supervisor acting as the Breath Alcohol Technician for covered employees under his or her direct supervision. In the final drug rule, published on the same day as the final alcohol rule, we prohibited a supervisor from acting as the collection site person. It was always our intent for the two rules, which cover the same employers and employees, to be as similar as possible, and this omission was unintentional. We now correct that omission.

**Random Testing**

The preamble discussion of random testing at 59 FR 7546 contained an error; we stated that ''an employer must include a refusal to submit to a test as a result of 0.02 or greater.'' The phrase ''0.02 or greater,'' however, should read ''0.04 or greater.'' The regulatory text, however, is accurate, and is not changed by this technical amendment.

**Random Testing Rate**

Section 654.35(c)(1) is changed to conform the alcohol rule to the amendment to the drug rule published in the **Federal Register** on December 2, 1994, at 59 FR 62218, 62231. Specifically, the Administrator may decrease the random testing rate from 25 percent to 10 percent if the two initial years of data indicate that the violation rate for the entire transit industry is less than 0.5 percent. This means that the Administrator will use two years of data from large operators, which start testing a year before small operators, and one year of data for small operators to determine the initial violation rate for the entire transit industry. This change affects only the initial two years of the alcohol testing program.

Also, FTA is adding three new paragraphs inadvertently omitted from its rule, but included in the rules published by the Federal Aviation Administration, the Federal Railroad Administration, and the Federal Highway Administration on February 15, 1994, at 59 FR 7391–92, 7464, and 7509. (To be codified at Appendix J to part 121 (III)(C)(10), (III)(C)(11)(a), (III)(C)(11)(b); 49 CFR 219.608 (e), (f)(1), and (f)(2); and 49 CFR 382.305 (j), (k)(1), and (k)(2).) Moreover, FTA made the same change to its drug rule on December 2, 1994, in a rule published in the **Federal Register** at 59 FR 62217, 62231.

These new paragraphs, (j), (k)(1), and (k)(2) address situations in which a covered employee is subject to the alcohol testing regulations of more than one Department of Transportation (DOT) agency. Paragraph (j) directs the employer to apply the random testing rate of the DOT agency that regulates more than 50 percent of a covered employee's function.

When an employer has employees regulated by different DOT agencies, paragraphs (k)(1) and (k)(2) allow an employer to establish separate pools for employees based on the rate set by the DOT agency regulating them, or to establish one pool for all its employees, but randomly test them at the highest minimum rate set by another DOT agency.

**Certification of Compliance**

On October 12, 1994, the FTA published a **Federal Register** Notice, at 59 FR 51793, entitled ''Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements.'' In the Notice, FTA compiled a complete listing and the full text of the certifications and assurances necessary to receive financial assistance from the Federal Transit Administration. Instead of submitting a variety of certifications and assurances with each grant application, the grant applicant and its attorney certify compliance with all of the certifications and assurances relevant to any and all grants for which the grant applicant wishes to apply in fiscal year 1995 by signing the single Signature Page, attached to the Notice, at 59 FR 51813. The Notice, which will be updated and republished annually for use in future fiscal years, includes a certification of compliance with the FTA drug and alcohol testing program. Accordingly, we are deleting as unnecessary the sample certifications in the rule.

**Retention of Records**

The preamble discussion of this topic contained an error; specifically, it stated in the Section-by-Section Analysis, Subpart D, paragraph A, at 59 FR 7546 that ''[t]he rule provides three separate record retention periods for different types of records—five years, three years, and one year.'' Actually, records must be retained for either five years, *two* years, or one year. The regulatory text, however, is accurate, and remains unchanged.

**List of Subjects in Part 654**

Alcohol testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Federal Transit Administration amends Title 49, Code of Federal Regulations, part 654 as follows:

## PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows:

**Authority:** 49 U.S.C. 5331; 49 CFR 1.51.

**§ 654.3 [Amended]**

1a. Paragraph (b) of § 654.3 is amended by removing ''part 219'' and adding in its place ''parts 219 and 382, as appropriate''.

2. The note to § 654.3 is amended by removing the phrase ''and 6'' and adding in its place the phrase ''and 16''.

**§ 654.7 [Amended]**

3. In § 654.7, the definition of *accident* is amended in paragraph (3) by removing the period at the end of the first sentence and adding a semicolon; and by removing the remaining text in paragraph (3).

4. The definition of *large operator* is amended by adding the word ''urbanized'' after the word ''an'' and before the word ''area''.

5. The definition of *safety-sensitive function* is amended in paragraph (4) by adding the words ''section 3 funding and is in an area of less than 50,000 in population or'' after the word ''receives'' and before the word ''section''.

6. The definition of *small operator* is amended by removing the words ''in an area'' and adding in their place the words ''in a nonurbanized area or in an urbanized area.''

7. The definition of *vehicle* is amended by adding the words ''or for ancillary services'' after the word ''transportation'' and before the period.

8. In § 654.7 a new definition following the definition of ''covered employee'' is added as follows:

**§ 654.7 Definitions.**

* * * * *

*Disabling damage* means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion*. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions*.

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

**§ 654.15 [Amended]**

9. Section 654.15(a) is amended by adding the word ''primarily'' after the word ''operating'' and before the word ''in'' and by adding the word ''urbanized'' after the word ''an'' and before the word ''area''.

10. Section 654.15(b) is amended by removing the words ''operating in an area'' and adding in their place the words ''operating primarily in a nonurbanized area or in an urbanized area''.

**§ 654.33 [Amended]**

11. Section 654.33(a)(1) is amended by removing the phrase ''on duty in'' and adding the word ''operating'' in its place.

12. Section 654.33(a)(2)(i) is amended by removing the phrase ''on duty in'' and adding the word ''operating'' in its place.

13. Section 654.33(a)(2)(ii) is amended by removing the phrase ''on duty in'' and adding the word ''operating'' in its place.

14. In § 654.35, paragraph (c)(1) is revised and paragraphs (j) and (k) are added to read as follows:

**§ 654.35 Random testing.**

* * * * *

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 654.53 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent. However, after the initial two years of testing by large transit operators and the initial first year of testing by small transit operators, the Administrator may lower the rate the following calendar year, if the combined violation rate is less than 0.5 percent and is in the interests of safety.

* * * * *

(j) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency for the same employer, the covered employee shall be subject to random alcohol testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the covered employee's function.

(k) If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

15. Section 654.45 is added to subpart C to read as follows:

**§ 654.45 Supervisor acting as Breath Alcohol Technician.**

An employer shall not permit a direct supervisor of an employee to serve as the breath alcohol technician for an alcohol test of the employee.

*Appendix A to Part 654—[Removed and Reserved]*

16. Appendix A to Part 654—Sample Certifications of Compliance is removed and reserved.

Issued: February 27, 1995.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 95–5178 Filed 3–3–95; 8:45 am]

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federal register

Monday
March 6, 1995

# Part IV

# Department of Health and Human Services

## Office of Community Services

## Request for Applications Under the Office of Community Services' FY 1995 Family Support Center and Gateway Demonstration Programs; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Community Services

**[Program Announcement No. OCS–95–07]**

### Request for Applications Under the Office of Community Services' FY 1995 Family Support Center and Gateway Demonstration Programs

**AGENCY:** Administration for Children and Families (ACF) DHHS.

**ACTION:** Announcement of availability of funds and request for applications under the Office of Community Services' FY 1995 Family Support Center and Gateway Demonstration Programs.

**SUMMARY:** The Office of Community Services (OCS) announces that competing applications will be accepted for Family Support Center and Gateway Demonstration projects authorized by the Stewart B. McKinney Homeless Assistance Act, as amended (P.L. 103–382). (See 42 U.S.C. 11481–11489.)

**CLOSING DATE:** The closing date for submission of applications is April 20, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Sheldon Shalit, Program Officer, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 401–4807.

This Announcement is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, *A Guide to Accessing and Downloading* is available from Ms. Minnie Landry at (202) 401–5309.

**SUPPLEMENTARY INFORMATION:** Under the Family Support Center Program, the Office of Community Services will make grants to eligible entities to pay for the cost of demonstration programs designed to prevent family homelessness through the provision of intensive and comprehensive supportive services to previously homeless individuals and families residing in subsidized public housing or those at risk of homelessness. Services to infants, children and youths shall be designed to enhance their physical, social and educational development and include an array of appropriate services that address the causes and deleterious effects of homelessness. Services to parents and other family members shall be designed to contribute to their child(ren)'s healthy development and to the acquisition of skills and resources that can prevent homelessness and move the family toward self-sufficiency. All services provided shall be coordinated through the auspices of an organized case management program and include necessary and appropriate services that address the economic and housing needs of the ''low-income and very low-income'' client families.

Under the Gateway Demonstration Program, grants will be provided to local education agencies to provide on-site education, training and necessary support services to economically disadvantaged residents of public housing. Applicants, in consultation with the local public housing authorities and private industry councils, will design such demonstration programs to increase literacy levels and basic employment skills among residents of public housing developments.

Eligible applicant entities for the Family Support Center Demonstration Program are limited to State and local government agencies, Head Start agencies and any community-based organization of demonstrated effectiveness such as a Community Action Agency designated under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790), public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6)), State Housing Finance Agencies, local education agencies, an institution of higher education, a public hospital, a community development corporation, a private industry council as defined under section 102(a) of the Job Training Partnership Act (JTPA)(29 U.S.C. 1512(a)), a community health center, and any other public or private nonprofit organizations specializing in the provision of social services.

Eligible applicant entities for the Gateway Demonstration Program are limited to local education agencies in consultation with public housing authorities and private industry councils. Such programs will provide required services as outlined in Part III, Section B.

*Availability of Funds and Grant Amounts*

1. OCS is statutorily limited to funding no more than 25 Family Support Center Demonstration grants for a period not to exceed three years. Approximately $7 million is available to support grant awards under this program announcement.

Under the Family Support Center Demonstration Program legislation, grants must be for a minimum amount of $200,000 per year for a total of at least $600,000 for the maximum project period of three years, and the maximum grant support allowable for a three-year project period is $2,000,000.

Pursuant to this Announcement, OCS plans to make up to approximately $4.3 available to fund up to 14 new grants with three year project periods and budget periods of 17-months for not less than $283,000 each and averaging approximately $310,000 per grantee. Applications for continuation grants funded under these awards beyond the 17-month budget period but within the three year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that this would be in the best interest of the government.

OCS expects to make $2,000,000 available to fund 10 competitive 12-month renewal grants. Current grantees completing their second year of Family Support Center Demonstration Programs are eligible to compete for renewal grants for a maximum of twelve additional months of support. This will allow these projects to complete a full three year program as a demonstration project.

2. OCS plans to fund 5 three-year Gateway Demonstration projects for a first-year budget period of up to $125,000 each.

### Part I: General Information—Family Support Center Demonstrations

*A. Program Purpose*

The Family Support Center Demonstration Program is an integral part of an HHS/HUD, White House and Interagency Council for the Homeless initiative to encourage and test integrated services delivery approaches to reducing homelessness among families with children. The purpose of this demonstration is to develop and operate Family Support Centers which can intervene to prevent family homelessness. The program supports the Family Support Center's efforts to coordinate and integrate its activities with State and local public and private agencies in providing improved assistance to this at-risk population. Using a coordinated case management approach, Family Support Centers should provide a comprehensive array of family oriented services to prevent initial occurrences of homelessness and to combat the effects of previous homelessness and to prevent its recurrence.

Family Support Centers, through the provision of a comprehensive array of supportive social services using

coordinated case management, should strive to enhance the physical, social, and educational development of low- and very low-income families, thereby increasing their chances of becoming self-sufficient. The intended beneficiaries of these services are families who are living in government-subsidized housing who were homeless or who are at risk of becoming homeless. (Families at risk of homelessness include those living in precarious housing situations, e.g., doubled up with another family; in unstable or inadequate housing; or those facing eviction or loss of housing.)

*B. Program Services*

The project awards will primarily allow for the development and establishment of a family support center that can arrange for and/or provide an array of comprehensive and intensive case-managed social services to those individuals and families who are living in government subsidized housing who were previously homeless or who are at risk of homelessness. Services to infants, children and youths shall be designed to enhance their physical, social and educational development and include an array of appropriate services that address the causes and deleterious effects of homelessness. Services to parents and other family members shall be designed to contribute to their child(ren)'s healthy development and to the achievement of skills and objectives that move the family toward self-sufficiency. All services provided shall be coordinated through the auspices of a family case management program and include necessary and appropriate services that address the economic and housing needs of the ''low-income and very low-income'' client families.

In the case of services provided to infants, children and youth, such services shall include, where appropriate, the following:

— Nutritional services
— Screening and referral services
— Child care services
— Early childhood development programs
— Early intervention services for children with, or at risk of developmental delays
— Dropout prevention services
— After school activities
— Job readiness and job training services
— Education (including basic skills and literacy services)
— Emergency services including special outreach services targeted to homeless and runaway youth
— Crisis intervention and counseling services
— Other services as necessary and appropriate

In the case of services provided to parents and other family members, services shall be designed to better enable parents and other family members to contribute to their child's healthy development and to the acquisition of skills and resources that can prevent homelessness and move the family toward self-sufficiency and shall include, where appropriate, the following:

—Substance abuse education
—Counseling
—Referral for treatment
—Crisis intervention
—Employment counseling and training
—Life-skills training, including personal financial counseling
—Education, including basic skills and literacy services
—Parenting classes
—Consumer homemaking
—Other services as necessary and appropriate

Family case management shall include the following:

—Needs assessment
—Support in accessing and maintaining appropriate public assistance and social services
—Referral and followup for substance abuse counseling and treatment
—Counseling and crisis intervention
—Family advocacy services
—Housing assistance activities
—Housing counseling
—Eviction or foreclosure prevention assistance
—Referral to sources of emergency rental or mortgage assistance payment
—Support in accessing home energy assistance
—Other services as appropriate

Centers may be part of an existing family oriented program for low and very low income, at risk families or a center organized specifically to provide services targeted at serving the previously homeless and/or at risk families in an identified community. Approaches are sought that emphasize a coordinated effort by a range of community-oriented entities that consolidate resources to the targeted population and which seek to replace a goal of maintenance with a goal of progression and transformation.

*C. Program Beneficiaries*

Projects proposed for funding under this announcement must directly benefit low-income and very low-income families with children residing in governmentally subsidized housing who were previously homeless or who are at-risk of becoming homeless. The term ''low-income'' when applied to families means one whose income does not exceed 80% of the median income for a family in the area, as determined by the Secretary of Housing and Urban Development, subject to his discretion to establish different ceilings based on area variations. The term ''very low-income'' when applied to families means one whose income does not exceed 50% of the median income for a family in the area, as determined by the Secretary of Housing and Urban Development, subject to his discretion to establish different ceilings based on area variations. (See Attachment A.)

*D. Eligible Applicants*

Eligible entities are State and local government agencies, Head Start agencies and any community-based organization of demonstrated effectiveness such as a Community Action Agency designated under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790), public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6)), State Housing Finance Agencies, local education agencies, an institution of higher education, a public hospital, a community development corporation, a private industry council as defined under section 102(a) of the Job Training Partnership Act (JTPA)(29 U.S.C. 1512(a)), a community health center, and any other public or private nonprofit organizations specializing in the provision of social services.

More than one eligible entity in a State may apply, but separate applications must be submitted.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the currently valid IRS tax exemption certificate *or* by providing a copy of the applicant's Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled.

*E. Project Period*

This announcement is soliciting applications for project periods of up to three years. Awards, on a competitive basis, will be for an initial seventeen (17) month budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the initial 17-month budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory

progress of the grantee and determination that continued funding would be in the best interest of the government.

**Part II: Guidelines for Family Support Center Demonstration Project Plans and Applications**

*A. Grant Objectives*

The objectives of the grants funded under the Family Support Center Demonstration Program are: the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the reduction in the rate of repeated incidences of homelessness among center clientele; and a decrease in the incidence of first time homelessness among community participants.

*B. Project Design*

The Family Support Center Demonstration Program is intended to prevent the occurrence or recurrence of family homelessness by providing an intensive and comprehensive array of supportive and other services. This announcement prescribes no single model, however, for designing, staffing, or delivering the services of such a program. Its purpose is to stimulate eligible entities to demonstrate the effectiveness of innovative models or approaches which will offer value to both the client population selected and the social services providers in the community. It invites applicants to propose structures and mechanisms for delivering services that are unique to the community and the clientele that they serve, and to propose a program and an approach that replace the goal of client maintenance with one of transformation of families to a position of self-sufficiency.

The center should create a centralized point for the provision of these services and facilitate access to various service providers in the community. The center should provide active family case management and assist clients in maintaining a stable household and assist them in achieving self-sufficiency. Further, the center should assist in joining the case management functions offered by other service providers to render coordinated family case management. The center should tie together service providers in the community and organize a means to reduce duplication of effort in response to their potentially or previously homeless clientele; and, to reduce the administrative and programmatic burdens that often are placed upon the client population.

To accomplish these goals, applicants are expected to have, in addition to the ability to provide a core of essential services, the capacity to coordinate, link and otherwise organize a cadre of existing providers and to propose a program and an approach that replace the goal of client maintenance with one of transformation to self-sufficiency. A Family Support Center Demonstration program should also include coordination and linkage with existing Federal, State and locally sponsored social services and housing programs such as the Community Services Block Grant (CSBG), AFDC/JOBS program and the varied programs of the Departments of Housing and Urban Development, Labor, and Education.

Each Family Support Center Demonstration Program applicant is required to exhibit the following:

—the capacity to administer a comprehensive support services program directed toward an identified target population;
—the geographic proximity of the facility to the families to be served or the ability to provide mobile or offsite services;
—the ability to coordinate and integrate its activities with State and local public agencies (such as agencies responsible for education, employment and training, health and mental health services, substance abuse services, social services, child care, nutrition, income assistance, housing and energy assistance, and other relevant services), with public or private non-profit agencies and organizations that have a demonstrated record of effectiveness in providing assistance to homeless and at risk families, and with appropriate non-profit private organizations involved in the delivery of eligible support services;
—the fiscal and administrative capacities to conduct a complex, comprehensive and intensive service delivery program;
—the involvement of project participants and community representatives in the planning and operation of the program;
—the utilization and proximity of available comparable Community Action Agency services, unless the applicant is the CAA and intends to expand its existing services;
—the provision of coordinated family case management services which direct all respective case management activities through a team approach;
—use of not more than 7 percent of their grant award to improve the retention and effectiveness of staff and volunteers;
—the participation in an ongoing evaluation mechanism to address process and outcome issues as they relate to the efficacy and efficiency of the demonstration program; and
—the establishment and provision of necessary staff to support an advisory body representing the community, providers and target population. The advisory council must include a participant of the program as an active member.

The operating and organizational structure of the program should include a range of agreements with community services providers that responds to the assessed needs of the client populations. These agreements are essential to the success of the project. The program seeks to attract prospective grantees with written agreements either in place at the time of application or able to be in place within 60 days of the grant award. This is to assure an accelerated provision of services to the clients. In those cases where additional services are to be added to existing service patterns, the grantee will provide timetables for the inclusion of these added services. Prospective grantees will have a combination of existing and potential agreements and affiliations for services. It is recommended that the program include affiliations with entities that support and enlarge its service providing role. This may include affiliations with the academic community, such as schools of social work, that may provide a source of staff resources, student/intern placements and a site for scholastic investigation, evaluation and research.

Most importantly, applicants must be closely identified with and located within circumscribed geographical boundaries that coincide with the location and residences of the target population. This catchment area concept should be reflected in the physical location of the project which should be readily accessible to the target population. This in no way limits the possible configurations for project locus. Instead, it permits a range of possibilities that is consistent with the residential pattern of the target population. While the project is most likely to be physically located in or near the place(s) where its target population lives, it is conceivable that its administrative functions may be off-site or co-located with parent agencies.

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced.

A percentage of non-Federal share, either in cash and/or in-kind contributions, secured from non-Federal sources is not required. The lack of a requirement is not intended in any way to discourage the use of applicant or third party financial and resource support. Although there is not a specific non-Federal percentage requirement for grants awarded under this announcement, the amount pledged will be given additional weight during the evaluation process. Therefore, the applicant should ensure any amount proposed as match prior to inclusion in its budget. If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal Funds. Further, it should be noted that as the project matures over the project life, there is an implicit encouragement of the assumption of costs of the project by the applicant and the constituent community participants.

*C. Grantee Assurances*

The applicant is required by statute to provide within its application the following:

1. Assurances that grant funds will be used to create new services only to the extent that no other funds can be obtained to fulfill the purpose, as required by 42 U.S.C. 11482(e)(2)(F);

2. A description of the program's relationship to various State and local agencies, as required by 42 U.S.C. 11482(e)(2)(G);

3. An explanation of the methods which the grantee will employ to ensure that no more than 7% of the grant funds awarded will be used to improve the retention and effectiveness of staff and volunteers, as required by 42 U.S.C. 11482(e)(2)(I);

4. Assurances that the grantee will establish an advisory council group of not more than 15 members to provide policy and programming guidance which will meet the representational requirements of 42 U.S.C. 11482(e)(2)(J). Representation includes the following:

—participants in the programs, including parents;
—representatives of local private industry;
—individuals with expertise in the services the program intends to offer;
—representatives of the community in which the program will be located;
—representatives of local government social service providers;
—representatives of local law enforcement agencies;
—representatives of the local public housing agency, where appropriate; and
—representatives of local education providers.

5. Assurances that any fees assessed by the grantee for program services will be nominal in relation to the financial situation of the recipient of such services, as required by 42 U.S.C. 11482(e)(2)(M); and

6. Assurance that grant funds will not be used to supplant Federal, State and local funds currently expended to provide program services, as required by 42 U.S.C. 11482(e)(2)(N).

*D. Project Evaluation*

The Department expects to contract for an independent evaluation of the programs and entities that receive assistance under this announcement. The anticipated evaluation shall examine, at a minimum, the fulfillment of program objectives. Additionally, for children and families served, the project evaluation will also include the following:

1. The enhancement of the living conditions of low and very low income families in housing and in neighborhoods;

2. The improvement of physical, social and educational development;

3. The achievement of progress towards increased potential for independence and self-sufficiency; and,

4. The degree to which the provision of services is affected by caseload size.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve initially, reaching agreement with the contractors on the collection and retention of data which will be needed for the evaluation, and thereafter periodically furnishing needed process and outcome oriented data as required and allowing them access to information that has not otherwise been provided by the grantee.

Grantees are expected to maintain sufficient resources to fulfill required data obligations and to respond to demands for information that is to be compiled for national evaluation and reporting purposes.

*E. Grant Applications*

Applicants should develop their applications so as to address the following factors and elements:

Responsiveness to Community Need

Applicants should identify the population to be served by the project and should describe how previously homeless and at-risk families within this community will be chosen for enrollment. They should provide demographic data to show that there are sufficient numbers of eligible low- and very low-income families residing in the designated area. The application should include a credible plan for enrolling a sufficient number of these families in the project to warrant project investment. Applicants should also demonstrate that the services they intend to provide are responsive both to the assessed needs of the population to be served and the purposes of this announcement.

Project Strategy

Applicants should persuasively explain their project strategy—how it will achieve the homelessness prevention goals of this program with the community to be served. The distinctive features of the service approach to be demonstrated should be emphasized, rather than an exhaustive description of all the individual service activities to be undertaken. As an integral part of this discussion, they should define the meaning of success for their project and describe the conditions that they expect to see exist at the conclusion of the project period. Applicants should also identify and briefly describe the kinds of results they will be seeking and the key measures of performance and accomplishment that management will be using to monitor and manage the initiative to a successful conclusion, using time-based graphics if appropriate.

Project Services and Delivery Arrangements

Applicants should identify the different services they will offer to achieve project goals and should describe where and how they will be provided. They should also describe the role and contribution of project partners, such as referral sources and agencies with which services will be coordinated. Both on-budget and no-cost partners should be identified and explained; the applicant should differentiate between those services to be provided with Federal funds and those [to be] committed to the project from other funding sources. Partnering applicants should furnish relevant

agreements, letters of commitment, and information about prior experience with these partners with their applications, indicating which services will be affected and the levels of service (availability and cost) that will be provided to project participants from these provider organizations.

Applicant Capabilities and Management Qualifications

Applicants should present, through relevant information about their personnel and their experience, their qualifications for undertaking a demonstration program of the type proposed. They should identify proposed project leadership, submit the resumes of relevant education and experience, and describe the previous success of the team or of its key members with strengthening families and their housing arrangements through the delivery and coordination of quality family support services. They should also address the experience of project leadership—especially the individual accountable for effective service delivery to the selected clientele—in coordinating other agencies and project participants over whom he/she has influence but not control. The roles and commitments of the key people in the project should be defined.

Project Plans (Budgets) and Schedules

Applicants should detail the implementation plan and schedule for the project, using time-based displays as appropriate. The early months of the schedule should detail service-building and/or service redirecting activities, with major project milestones such as training capacities established, cooperative services open for use, and apprenticeship relationships created. Later entries should indicate when various kinds of project outcomes will begin to be realized in the lives of the community being served. The budget for the project should be correlated with this timeline, showing approximately when budget resources (including non-Federal) will be available and how they will be used to conduct project activity.

Project Reporting

Provide in descriptive terms, the manner in which required reports are to be assembled along with the identification of data sources. The application should identify and describe the mechanisms that will be instituted and the commitment of specific resources that will address the requisite evaluation activities, including commitment to meet information requirements. This would necessarily include the reliance on a useful information management system that is capable of producing program outcome data and responding to needs of a national evaluation study.

Renewal applications should, with regard to future program operations, include the basic information required above. In addition, renewal applications should also include a description of the program's previous 12 months of operation in sufficient detail that it can be reviewed against the project evaluation criteria found in Part IV of this document.

## Part III: Description of the Gateway Demonstration Program

### *A. Program Purpose*

This demonstration program will provide grant funds to local education agencies, in consultation with the local public housing authority and private industry council, to provide on-site education, training and necessary support services to economically disadvantaged residents of public housing who have encountered barriers to employment because of basic skills deficiencies.

### *B. Program Services and Requirements*

The project awards will primarily allow for the development, establishment and operation of an education, training and support services program, at a minimum, consisting of the following mandatory services:

—Outreach and information services designed to make eligible individuals aware of available services;
—Literacy and bilingual education services, where appropriate and necessary;
—Remedial education and basic skills training;
—Employment training and personal management skill development or referrals for such services; and
—Child care or dependent care for dependents of eligible individuals during those times, including afternoons and evenings, when training services are being provided. (To the extent practicable, child care services shall be designed to employ public housing residents after appropriate training.)

Program may provide the following optional services:

—Pre-employment skills training;
—Employment counseling and application assistance;
—Job development services;
—Federal employment-related activity services;
—Completion of high school or GED program services;
—Transitional assistance, including child care for up to 6 months to enable such individual to successfully secure unsubsidized employment;
—Substance abuse prevention and education; and,
—Other appropriate support services.

### *C. Program Beneficiaries*

Projects proposed for funding under this portion of the announcement must directly target training and services to individuals who reside in public housing; are economically disadvantaged; and have encountered barriers to employment because of basic skills deficiency including not having a high school diploma, GED, or the equivalent. The grantee shall give priority to single heads of households with young dependent children.

### *D. Evaluation*

The Department expects to contract for an independent evaluation of the programs and entities that receive assistance under this program. The anticipated evaluation shall examine, at a minimum, with respect to the fulfillment of program objectives for families with children residing in public housing, the ability of the Gateway Program to promote increases in literacy levels and basic employment skills and the securing of jobs.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve periodically furnishing needed process and outcome oriented data as required by the contractors and allowing them access to information that has not otherwise been provided by the grantee.

Grantees are expected to maintain sufficient resources to fulfill required data obligations and to respond to requests for information that is to be compiled for national evaluation and reporting.

### *E. Eligible Applicants*

Eligible entities are local education agencies.

### *F. Project Period*

This announcement is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a seventeen (17) month budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the 17-month budget period, but within the three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the

grantee and determination that this would be in the best interest of the government.

*G. Requirements*

The applicant shall demonstrate that training and ancillary support services will be accessed through existing program providers to the extent that they are located in the immediate vicinity of the public housing development, or they will contract with such providers for on-site service delivery. The applicant shall warrant that funds provided under this program will be utilized to purchase such services only to the extent that no other funds can be obtained to fulfill the purpose of this demonstration.

The local public housing agency shall agree to make available suitable facilities in the public housing development for the provision of education, training and support services.

The applicant shall detail the process by which the recipients of services will be recruited with the assistance of the public housing authority and how they will be determined to be eligible individuals.

The applicant shall demonstrate the ability to coordinate the services provided with other services provided, with the public housing development and private industry council as well as with other public and private agencies and organizations of demonstrated effectiveness providing similar and ancillary services to the target population.

The applicant, to the fullest extent practicable, shall set forth the manner in which it will attempt to employ residents of the public housing development whenever qualified residents are available.

**Part IV: Criteria for Review and Evaluation of Applications for New Family Support Center and Gateway Demonstration Programs**

Applications for both programs will be reviewed and evaluated to assess the applicant's ability to carry out the projects described under Part II and III of this announcement, using the following criteria and weights:

*A. Understanding of Program Purposes and Community Needs (10 points)*

1. Understanding of Program Purposes (0–5 points)

The extent to which the application reflects a good understanding of the purpose(s) of the program, including the problems, barriers and impediments that prevent the efficient and effective delivery of an array of intensive and comprehensive services. For the Family Support Center Program, the purpose is to stabilize previously homeless and at-risk families and prevent them experiencing initial or recurring episodes of homelessness. For the Gateway Program, the purpose is to provide education, training and necessary support services to economically disadvantaged residents of public housing who have encountered barriers to employment because of basic skills deficiencies.

2. Understanding of Client, Community, and Service System Needs (0–5 points)

The degree to which the application presents the appropriate and pertinent demographic, social and personal data describing the needs of the client populations to be served. Specifically, the Family Support Center application should identify the extent of family homelessness and the numbers of families in the project's community who are at risk of becoming homeless. For both programs, community data should reflect the resources and the lack of services or programs to address the target population needs. Service system needs should reveal the extent to which there is potential for short to intermediate range solutions to organizational and systemic problems that affect the target populations.

*B. Quality of Project Plan (40 points)*

1. Degree of Innovativeness (0–10 points)

Application should articulate creative and otherwise original approaches and ways to achieve project objectives; application describes unique features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary client and community involvements. The application uses original and enterprising means to identify, target, reach and serve children and families using creative and innovative configurations of mainstream and other programs in the community.

2. Soundness and Clarity of Project Approach/Strategy (0–15 points)

The soundness and feasibility of the project approach to achieve specified goals and objectives and response to client, community and system needs. The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished and gives acceptable reasons for taking one approach as opposed to others. The inclusion of plans and actions to accomplish service coordination and delivery.

3. Appropriateness and Specificity of Project Goals (0–5 points)

The enumeration of clearly articulated goals and corresponding objectives addressing the problems. These should be listed in a sequential and integrated fashion tied to program purposes and client needs. For the Family Support Center, this must include the reduction of family homelessness through prevention measures. For Gateway, this must include education and training to prepare participants for employment.

4. Appropriateness of Performance and Impact Measures Selected (0–5 points)

Application lists the activities along with anticipated steps to be carried out in a programmatic and chronological order. Application includes a feasible schedule of target dates and accomplishments, in sufficient detail, for the first seventeen months and more generally for the remaining project period up to 36 months.

Application identifies measurable expected results for participating children and families.

5. Cost Effectiveness (0–5 points)

The extent to which the project's financial costs are reasonable in view of the activities to be carried out and their forecasted outcomes. Applications should address cost expenditures *vis a vis* anticipated project related benefits.

*C. Capacity (20 points)*

1. Staff Background and Experience (0–10 points)

The extent to which the résumés of the program director and key project staff (including names, addresses, training, background and other qualifying experience) demonstrate the ability to effectively and efficiently administer and/or operate within a project of this size, complexity and scope. Staff background and experience should also exhibit clearly the ability of proposed staff to use and coordinate activities with other agencies for the delivery of intensive and comprehensive support services. In the event that new hires or positions are involved, application should include position descriptions and demonstrate the ability to bring available human resources quickly on line with the project.

2. Organization (0–10 points)

Organizational resources that can be utilized within this project, including applicant facilities and physical resources such as existing office and

client services space. The resources capacity of the organization may also include the attributes of the applicant entity to attract cooperating community and other agency resources such as outside means, properties and assets to participate in the program. Application also includes information confirming the organization's administrative and management capabilities and its appropriate location within the organizational structure to support the successful operation of this project.

*D. Coordination (15 points)*

1. Consortia or Project Partnerships (0–5 points)

Application demonstrates breadth and depth in the strength of the consortia involved in the project. Application describes project coordination and linkages with organizations, agencies, and key groups as well as the activities and nature of their effort or contribution. Partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

2. Committed Resources (0–5 points)

Application identifies current and/or anticipated commitments indicating kinds of service along with specific level of efforts from cooperating service-providing organizations or agencies.

3. Linkages (0–5 points)

Confirmation of linkages established with other local systems-oriented or integration initiatives.

*E. Monitoring and Evaluation (15 points)*

1. Reports and Monitoring (0–5 points)

Application should include information reflecting the entity's ability to conform to required schedule of program and administrative reports and to maintain controls through an organized monitoring effort.

2. Evaluation Activities (0–10 points)

Application should contain information outlining the entity's ability and willingness to participate in ongoing evaluation mechanisms and the capacity to provide required process and outcome oriented data. For the Family Support Center program, these data requirements will support identification and evaluation of grantee objectives, namely, the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the reduction in the rate of repeated incidences of homelessness among center clientele and a decrease in the incidence of first time homelessness among community participants.

For Gateway programs, these data requirements will support identification and evaluation of grantee objectives, namely, the removal of barriers to employment because of basic skills deficiencies and the preparation for employment and securing of jobs.

**Part V: Criteria for Review and Evaluation of Applications for Family Support Center Demonstration Renewal Projects—Only**

Applications for renewals will be reviewed and evaluated to assess the applicant's ability to carry out the projects described under Part II of this announcement, using the following criteria and weights:

*A. Understanding of Program Purposes and Community Needs (0–25 points)*

The application has briefly restated the key elements of the initial grant's approved work plan, including the problems, barriers and impediments that have prevented the effective delivery of intensive and comprehensive services to homeless and at risk families. In describing the initial plan the applicant has included pertinent demographic, social and personal data describing the needs of the client population to be served, and the ability of the community to respond to such needs.

*B. Quality of Project Plan (0–40 points)*

The application provides sufficient evidence of positive outcomes demonstrating that initial project design, approach and implementation strategies are effective in responding to client and community homeless prevention needs. The information is sufficient to identify and evaluate grantee accomplishments, namely, the enhancement of the living conditions of low and very low income families; the improvement of the physical, social and educational development of low and very low income children and families served by the program; the achievement of progress towards increased potential for independence and self-sufficiency among families served; the degree to which the provision of services is affected by caseload size; the reduction in the rate of repeated incidences of homelessness among center clientele; and a decrease in the incidences of first time homelessness among community participants.

*C. Institutional and Community Coordination (0–15 points)*

The applicant shows that there has been a continuing involvement among the community service partners and an increased coordination in service delivery programs as a result of its initial grant. Partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

The application reflects how the initial period of the grant has had a positive impact toward strengthening the community socio-economic infrastructure, and toward achieving greater access to community resources and/or greater integration of available social service delivery systems while preventing family homelessness.

*D. Cost Effectiveness (0–10 points)*

The extent to which the project's financial costs are reasonable in view of accomplishments and forecasted outcomes. Application should address cost expenditures *vis a vis* project benefits to date and anticipate project related benefits.

*E. Evaluation Significance (0–10 points)*

—The applicant has demonstrated that a longer project operational period is needed to assure program results that will have greater significance.
—The applicant has documented that the renewal of its project will result in more substantial progress toward self-sufficiency of the targeted client population.
—The applicant has demonstrated that a renewal of the grant will result in a more valid and useful project including what the anticipated contributions to policy, practice, and program evaluation will be.

**Part VI: Application Procedures**

*A. Availability of Forms*

This announcement with attachments contains standard forms necessary to apply for awards under this program. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed in the section entitled ''For Further Information'' at the beginning of this Announcement or through the OCS Electronic Bulletin Board.

Agencies and organizations interested in applying for demonstration grant funds should submit an application on the Standard Form 424, 424A and 424B included in this announcement.

Each Form 424 must be signed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached applications package.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

*B. Application Submission*

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447, or

b. Sent on or before the deadline date and received by ACF in time for the independent review. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not accepted as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: The Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, S.W., Washington, D.C. 20447.

3. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. *Extension of Deadline.* The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant. Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies are required.

**Note:** Applicants should note that the U.S. Postal Service does not uniformly provide a dated post mark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

*C. Application Consideration*

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Applications meeting the above screening requirements will be reviewed competitively and scored against the criteria outlined in Part IV or Part V of this announcement. The review will be conducted in Washington, D.C. Such applications will be referred to reviewers knowledgeable about programs dealing with housing, homelessness, education, community action and supportive services. Reviewers will provide a numerical score and explanatory comments based solely on responsiveness to the specific criteria published in this announcement. Reviewers' scores will weigh heavily in funding decisions but may not be the only factor considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding as other factors are considered, including: comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

The results of the competitive review will assist the Director of the Office of Community Services, in considering competing applications. Consideration will be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

*D. Intergovernmental Review*

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and

Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th Floor, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

**Part VII: Instructions for Completing Applications**

(Approved by the Office of Management and Budget under Control Number 0970–0062)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement. It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write ''NA'' for ''Not Applicable''. If your submission on an item needs further explanation or is not directly responsive to the item requested, please explain or provide commentary in Item Number 23. This item may be extended by use of an additional sheet of paper, appropriately identified.

Prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

*A. SF–424—''Application for Federal Assistance'' (see Attachment B)*

Item 1. For the purposes of this announcement, all projects are considered ''Applications''; there are no ''Pre-Applications'' and no Construction projects. Accordingly, check the ''Non-Construction'' box.

Item 2. ''Date Submitted'' and ''Applicant Identifier''—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. ''Date received by State''—N/A.

Item 4. ''Date received by Federal Agency''—Leave blank.

Item 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled ''Federal Identifier'' located at the top right hand corner of the form.

Item 7. Mark the appropriate box. If the applicant is a non-profit corporation, enter ''N'' in the box and specify ''non-profit corporation'' in the space marked ''other''. Proof of non-profit status, such as IRS determination or Articles of Incorporation, must be included as an appendix to the project narrative.

Item 8. ''Type of Application''—Please indicate the type of application (New or New-Renewal).

Item 9. ''Name of Federal Agency''—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance Number for OCS programs covered under this announcement is 93.578. The title is ''Family Support Center and Gateway Demonstration Program''.

Item 11. ''Descriptive Title of Applicant's Project''—Enter the project title (a brief descriptive title) and the following letter designations must be used:

ZC—Family Support Center
ZR—Family Support Center Renewals
ZG—Gateway Demonstration

Item 12. ''Areas Affected by Project''—List only the largest unit or units affected, such as State, county or city.

Item 13. ''Proposed Project''—Enter the desirable starting date for the project and the proposed completion date. Projects may not exceed the maximum duration specified.

Item 14. ''Congressional District of Applicant/Project'' —Enter the number of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional district(s) where the project will be located.

Item 15a. This amount should be no greater than the amount specified under the Section on *Availability of Funds and Grant Amounts.*

*B. SF–424A—''Budget Information-Non-Construction Programs''*

(See Attachment C)

See Instructions accompanying this form as well as the instructions set forth below:

Sections A, B, C, and D should reflect budget estimates for the first year of the project. Section E should present the estimates for Federal assistance for the second year of the project. Grant awardees will be required to submit a ''continuation application'' for the second year of the project.

In completing these sections, the ''Federal Funds'' budget entries should separately identify all Federal funds involved in the project, ''Non-Federal'' will include mobilized funds from all other sources—applicant, State, and other.

Section A—Budget Summary

Line 1: Column (a): Enter ''Family Support Center/Gateway Demonstration Program''; Column (b): Enter 93.578 Columns (c) and (d): Not Applicable for new applications. Columns (e), (f) and (g): enter the appropriate amounts needed to support the project for the first budget period.

Lines 2–4: Enter same information as above for any other Federal funds proposed to be used in the project. (Please explain status of funds; e.g., approved or requested, etc.)

Section B—Budget Categories

Allocability of costs are governed by applicable cost principles set forth in OMB Circular A–122 and 45 CFR Part 74 (non-governmental) and OMB Circular A–7 and 45 CFR Part 92 (governmental). Budget estimates for all costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculations to be duplicated. For any additional object class categories included under the object class ''other'' identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travels; new positions; major equipment purchases and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included, as indicated below.

Personnel-Line 6a. Enter the estimated total costs of salaries and wages.

*Justification:* Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits-Line 6b: Enter the estimated total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

*Justification:* Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel-Line 6c: Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

*Justification:* Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Except for Family Support Center renewal applications, travel costs to attend one national workshop in Washington, D.C. by the project director should be included.

Equipment-Line 6d: Enter the estimated total costs of all tangible, non-expendable personal property to be acquired by the project. Tangible, non-expendable personal property is that which has a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

*Justification:* Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined above. (See Line 21 for additional requirements).

Supplies-Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

*Justification:* Specify general categories of supplies and their costs.

Contractual-Line 6f: Enter the total costs of all contracts: (1) procurement contracts (except those which belong on other lemires such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

*Justification:* If available at the time of application, attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

**Note:** Whenever the applicant/grantee intends to delegate part of the program to another agency, thus entering into an interagency agreement, the applicant/grantee must submit Sections A and B of this Form SF–24A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Free and open competition is encouraged for any procurement activities planned using ACF grant funds. Prior approval is required when applicants anticipate procurements that will exceed $25,000 are requesting an award without competition.

The applicant's procurement procedures should outline the type of advertisement appropriate to the nature and anticipated value of the contract to be awarded. Advertisements are typically made in city, regional and local newspapers; trade journals; and/or through announcements by professional associations.

Construction-Line 6g: New construction costs are not permitted under this program. This line may be used for renovation costs.

Other-Line 6h: Enter the estimated total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), space and equipment rentals, printing and publication, computer use, training costs including tuition, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges-Line 6j: Enter the total amount of indirect costs. This line generally should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agency. With the exception of local governments, applicants should enclose a copy of a current rate agreement negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant organization is renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total-Line 6k: Enter total amounts of lines 6i and 6j.

Program Income-Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

*Justification:* Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of ''non-Federal'' resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, and whether it is cash or third-party in-kind. The firm commitment of these funds should be documented and submitted with the application in order to be given full credit in the review criteria.

*Justification:* Describe all non-Federal resources including third-party, cash and/or in-kind contributions. Except in unusual situations, this documentation should be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Grant Program-Line 8. Grant Program.

Column (a): Enter the project title.

Column (b): Enter the amount of cash or donations to be made by the applicant.

Column (c): Enter the other contribution.

Column (d): Enter the amount of cash and third-party, in kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program-Lines 9, 10, and 11 should be left blank.

Grant Program-Line 12. Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal-Line 13. Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 17-month budget period for Family Support Center Demonstration applications. For Gateway Demonstration grants, enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12-month budget period.

Non-Federal-Line 14. Enter the amount of cash from all other sources needed by quarter during the first year.

Total-Line 15. Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Applicants for two year projects will complete line 16, (a), (b) and (c).

Column (a) refers respectively to the second year of the project.

Section F— Other Budget Information

Direct Charges-Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges-Line 22. Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks-Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

*C. SF–24B—''Assurances-Non-Construction''*

All applicants must fill out, sign, date and return the ''Assurances'' (see Attachment D) with the application.

**Part VIII: Contents of Application and Receipt Process**

*A. Contents of Application*

Each application submission should include a signed original and two additional copies of the application. Each application should include the following in the order presented:

1. Table of Contents;
2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

[Note: The original SF–24 must bear the original signature of the authorizing representative of the applicant organization]

3. ''Budget Information-Non-Construction Programs'' (SF-424A);
4. A narrative budget justification for each object class category required under Section B, SF–424A;
5. Filled out, signed, and dated ''Assurances-Non-Construction Programs'' (SF–424B);
6. The applicant should sign Attachment E. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.
7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.
8. A project abstract (a paragraph which succinctly describes the project in 200 characters or less).
9. An Executive Summary—not to exceed one page;
10. Appendices, including (where applicable) proof of non-profit status; proof that the organization is a community development corporation, commitments from service providing organizations, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and resumes.
11. A self-addressed mailing label which can be affixed to a notice to acknowledge receipt of application.

The total number of pages for the entire application package, excluding Appendices, should not exceed 50 pages. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF–424 as Page #1.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½×11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the application. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

*B. Acknowledgement of Receipt*

All applicants who meet the initial screening criteria outlines in Part V, Section C will receive an acknowledgement notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9365.

**Part IX: Post-Award Information and Reporting Requirements**

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for any dissemination effort conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92 and OMB Circular A–133 and OMB Circular A–128, Audits of States and Local Governments.

Attachment I indicates the regulations which apply to all applicants/grantees under the Family Support Center and Gateway Demonstration Programs.

Dated: February 23, 1995.

**Donald Sykes,**

*Director, Office of Community Services.*

## Attachment A

### FY 1995 Median Family Income as Determined by the Secretary of Housing and Urban Development

HUD Field Offices with assisted housing program functions are responsible for maintaining records of income limits established for areas within their jurisdiction. Field Offices are prepared to make income limits available to the public upon request.

Requests from the public for individual area limits, sets of national or regional income limits may be secured by calling 1–800–245–2691 (301–251–5154 in the Washington, DC area).

The Office of Community Services, Division of Community Demonstration Programs maintains a current set of income information. You may contact Mr. Sheldon Shalit at 202–401–4807 if you are not able to access the appropriate information from the toll free number listed above.

BILLING CODE 4184–01–P

Attachment B

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| | |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| | |

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4184–01–C

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

*Item and entry*

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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**Instructions for the SF–424A**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

*Section A. Budget Summary*

Line 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Attachment D**

[OMB Approval No. 0348–0040]

**Assurances—Non-Construction Programs**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a

purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544), as amended (7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

BILLING CODE 4184–01–P

Attachment E

## U.S. Department of Health and Human Services

## Certification Regarding Drug-Free Workplace Requirements

## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

*Check* ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

BILLING CODE 4184–01–C

**Attachment F**

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction.'' Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

(To be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions.'' Without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Attachment G**

**Executive Order 12372—State Single Points of Contact**

*Arizona*

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

*Arkansas*

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

*California*

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

*Delaware*

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

*District of Columbia*

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

*Florida*

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

*Georgia*

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

*Illinois*

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Straton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

*Indiana*

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

*Iowa*

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

*Kentucky*

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

*Maine*

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

*Maryland*

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

*Massachusetts*

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

*Michigan*

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

*Mississippi*

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

*Missouri*

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

*New Hampshire*

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

*New Jersey*

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

*New Mexico*

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

*New York*

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

*North Carolina*

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin. N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

*North Dakota*

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

*Rhode Island*

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

*South Carolina*

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

*Tennessee*

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

*Texas*

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

*Utah*

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

*Vermont*

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

*West Virginia*

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

*Wisconsin*

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

*Wyoming*

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

*Guam*

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

*Puerto Rico*

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

**Attachment H**

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Entity** *(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

**Authorized for Local Reproduction**
**Standard Form - LLL**

BILLING CODE 4184–01–C

**Attachment I—DHHS Regulations Applying to All Applicants/Grantees Under the Family Support Center and Gateway Demonstration Programs**

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections

74.62(a) Non-Federal Audits

74.173 Hospitals

74.174(b) Other Nonprofit Organizations

74.304 Final Decisions in Disputes

74.710 Real Property, Equipment and Supplies

74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance

**Subpart F—Drug Free Workplace Requirements**

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

**Attachment J**

**Certification Regarding Maintenance of Effort**

The undersigned certifies that:

(1) activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

_____

Organization

_____

Authorized Signature

_____

Title

_____

Date

**Attachment K**

**Certification Regarding Environmental Tobacco Smoke**

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–5330 Filed 3–3–95; 8:45 am]

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March 6, 1995

# Part V

# Department of Labor

## Pension and Welfare Benefits Administration

## 29 CFR Part 2509

## Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974; Final Rule

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**29 CFR Part 2509**

**[Interpretive Bulletin No. 95–1]**

## Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

**AGENCY:** PWBA, Department of Labor.

**ACTION:** Interpretive Bulletin.

**SUMMARY:** This document announces the Department of Labor's (the Department's) view of the legal standard imposed by section 404(a)(1) (A) and (B) of part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA) on a plan fiduciary's selection of an annuity provider when purchasing annuities for the purpose of distributing benefits under an employee pension benefit plan. Under this standard, plan fiduciaries choosing to purchase annuities have a duty to select the safest available annuity provider, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise. The document also provides guidance to plan fiduciaries regarding circumstances when it may be in the interest of the participants and beneficiaries to purchase other than the safest available annuity.

**EFFECTIVE DATE:** The standard announced in this bulletin is effective January 1, 1975.

**FOR FURTHER INFORMATION CONTACT:** William W. Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Rm N–4611, 200 Constitution Ave., NW., Washington, DC 20210, (telephone (202) 219–9141) or Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N–5669, 200 Constitution Avenue NW., Washington, DC 20210, (telephone (202) 219–8671). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** In order to provide a concise and ready reference to its interpretations of ERISA, the Department of Labor publishes its Interpretive Bulletins in the Rules and Regulations section of the **Federal Register**.

Published in this issue of the **Federal Register** is ERISA Interpretive Bulletin 95–1, which describes the application of the fiduciary standards set forth in section 404(a)(1) (A) and (B) of ERISA, 29 U.S.C. 1104(a)(1) (A) and (B), in selecting an insurer to provide pension benefit distribution annuities to plan participants and beneficiaries. The Department is publishing this Interpretive Bulletin because it believes there is a need for further guidance regarding the selection of such annuity providers by plan fiduciaries.

(Sec. 505, Pub. L. 93–406, 88 Stat. 894 (29 U.S.C. 1135))

### Background

Annuities are issued by insurers in a variety of forms designed to suit different purposes. This interpretive bulletin addresses only annuities that are purchased by pension plans with the intention to transfer liability for benefits promised under the plan to the annuity provider (i.e., the insurance company).[1] Annuities designed to serve this purpose are sometimes referred to herein as benefit distribution annuities. Regulations issued by the Department explicitly recognize a transfer of liability from the plan when such an annuity is purchased from an insurance company licensed to do business in a State. 29 CFR 2510.3–3(d)(2)(ii).[2] Pension plans purchase benefit distribution annuity contracts in a variety of circumstances. Such annuities may be purchased for participants and beneficiaries in connection with the termination of a plan, or in the case of an ongoing plan, annuities might be purchased for participants who are retiring or separating from service with accrued vested benefits.

The selection of an annuity provider under these circumstances is a fiduciary decision governed by part 4 of title I of ERISA. Specifically, pursuant to ERISA section 404(a)(1), 29 U.S.C. 1104(a)(1), fiduciaries must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries. Section 404(a)(1)(A), 29 U.S.C. 1104(a)(1)(A), states that the fiduciary must act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable plan administration expenses. In addition, section 404(a)(1)(B) requires a fiduciary to act with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity would use.[3]

Several developments over the past few years have resulted in questions being raised about the security of the pension benefits promised to participants and beneficiaries under benefit distribution annuity contracts purchased on their behalf. In particular, concerns have been expressed about the ability of certain insurance carriers to satisfy their annuity liabilities because their investment portfolios contain or contained substantial amounts of high-risk, high-yield debt securities (also known as ''junk bonds'') or troubled real-estate loans, or a combination of both. The basis for such concerns is best exemplified by the well-publicized developments involving the Executive Life Insurance Companies of California and New York. State regulators in both California and New York were forced to take control of the operations of the Executive Life Companies, whose poor financial condition is principally attributable to substantial investments in high risk bonds. In response to such developments, the Department has acted in the following areas to enforce ERISA's fiduciary standards and determine whether additional regulatory action is warranted.

### Litigation

Subsequent to the failure of Executive Life, the Department's enforcement activities have centered on, among other things, the process by which plan fiduciaries selected annuity providers.

The Department has filed lawsuits against numerous companies whose plans purchased annuities because the plan fiduciaries who, acting in their fiduciary capacities, failed to follow adequate procedures designed to select

[1] In particular, the interpretive bulletin does not address fiduciary responsibilities in connection with the purchase of annuities for investment purposes. *See infra* note 5.

[2] This regulation defines the term ''participant covered under the plan'' for certain purposes under title I of ERISA. The Department notes that the regulation was issued primarily to define the class of participants entitled to receive copies of certain plan documents without charge and without request under ERISA sections 101(a) and 104(b)(1), 29 U.S.C. 1021(a) and 1024(b)(1). 40 FR 24649 (June 9, 1975), 40 FR 34528 (Aug. 15, 1975). A premise of the regulation was that, by using the term ''participant covered under the plan,'' Congress had provided a ground for distinguishing between the class of all participants within the meaning of ERISA § 3(7) and participants entitled to receive copies of plan documents without charge and without request. 40 FR 24649 (June 9, 1975). Thus, the regulation is not intended to define the term ''participant'' or ''beneficiary'' for all purposes under ERISA, and, in particular, is not intended to define these terms for purposes of standing to bring a civil action under ERISA section 502(a), 29 U.S.C. 1132(a).

[3] On March 13, 1986, the Department released an information letter addressed to John N. Erlenborn, who was then the Chairman of the Advisory Council on Employee Welfare and Plans. In the letter, the Department stated in pertinent part:

Consistent with the functional analysis of fiduciary activity, the choice of an insurer would appear to involve the type of discretionary authority over the disposition of plan assets covered in section 3(21)(A) [of ERISA]. . . . Therefore, it appears that the fiduciary provisions of ERISA, including the prudence requirement of section 404(a)(1)(B), will apply to the choice of an insurer to issue annuities upon plan termination.

the safety available insurance carrier when choosing an annuity provider. Cases have been brought against several companies which purchased annuities from Executive Life including Pacific Lumber Co., Magnetek, Inc., Smith International, Inc., Geosource, Inc., American National Can Company, AFG Industries, Inc., and Raymark Industries, Inc. as well as against the Strouse Adler Company which purchased annuities from Presidential Life Insurance Company. It is the Department's position that these fiduciaries breached their fiduciary responsibilities under ERISA in connection with their selection of annuity providers.[4] Consent orders settling the Secretary's claims have been entered in certain of these cases.

**Regulatory Action**

In addition to its enforcement activities, the Department and the Pension Benefit Guaranty Corporation (PBGC) sought to determine if, in addition to and independent of ERISA's fiduciary standards, minimum standards for annuity providers would be appropriate and necessary in order to ensure a reasonable likelihood that participants or beneficiaries on whose behalf annuities are purchased will receive their promised pension benefits. It was anticipated that such modification might be effected by amending the minimum standards which already exist under the regulation at 29 CFR 2510.3–3(d)(2)(ii). On June 21, 1991, both the Department and the PBGC published advanced notices of proposed rulemaking (ANPRMs) in the **Federal Register** (56 FR 28638 and 56 FR 28642 respectively) soliciting information and comments from the public as to whether regulatory action relating to the purchase of annuity contracts was necessary and if so, what form such action should take.

After receiving over thirty letters in response, the Department reviewed the comments and, after extensive deliberation, the Department has determined that no regulatory action should be taken at this time to amend the minimum standards under the regulation at 29 CFR 2510.3–3(d)(2)(ii). More generally, the Department has decided not to promulgate any regulation limiting the circumstances under which the purchase of an annuity will be considered a full distribution of benefits for a participant or beneficiary such that the plan's and the employer's obligations to pay benefits have been served.

The following interpretive bulletin concerns solely the fiduciary standard and is published in addition to and independent of the regulatory minimum standard at 29 CFR 2510.3–3(d)(2)(ii).

**The Interpretive Bulletin**

The interpretive bulletin explains that, when choosing an annuity provider for purposes of a benefit distribution, whether for purposes of separation or retirement of a participant or upon termination of a plan, compliance with ERISA's fiduciary rules requires, at a minimum, that plan fiduciaries conduct an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities. In conducting such a search, a fiduciary must evaluate a potential annuity provider's claims-paying ability and creditworthiness because the participants and beneficiaries whose entitlement to benefits will be transferred to the annuity provider have a paramount interest in the ability of the provider to make those payments. As a result, the interpretive bulletin states that a plan fiduciary choosing an annuity provider for the purpose of making a benefit distribution must take steps calculated to obtain the safest annuity available, unless under the circumstances, it would be in the interests of the plan participants and beneficiaries to do otherwise.[5] The Department recognizes that, in many circumstances likely to arise under existing law, the interest of the plan participants and beneficiaries may require the selecting fiduciary to consider the cost of the annuity (to the extent that the cost is borne by the participants and beneficiaries) in addition to the annuity provider's claims-paying ability.[6] Cost consideration may not, however, justify purchase of an unsafe annuity.

The Interpretive bulletin also explains that an annuity provider's claims-paying ability and creditworthiness should be evaluated on the basis of a number of factors. Although ratings provided by insurance rating services may be a useful factor in evaluating a potential annuity provider, reliance solely on such ratings would not be sufficient to meet the requirement of a thorough and analytical search for an appropriate annuity provider.

**List of Subjects in 29 CFR Part 2509**

Employee benefit plans, Pensions.

For the reasons set forth in the preamble, Part 2509 of Title 29 of the Code of Federal Regulations is amended as follows:

## PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for Part 2509 continues to read as follows:

**Authority:** 29 U.S.C. 1135. Section 2509.75–1 is also issued under 29 U.S.C. 1114. Sections 2509.75–10 and 2509.75–2 are also issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. Part 2509 is amended by adding a new § 2509.95–1 to read as follows:

**§ 2509.95–1 Interpretive Bulletin relating to the fiduciary standard under ERISA when selecting an annuity provider.**

(a) Scope. This Interpretive Bulletin provides guidance concerning certain fiduciary standards under part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104–1114, applicable to the selection of annuity providers for the purpose of pension plan benefit distributions where the plan intends to transfer liability for benefits to the annuity provider.

(b) In General. Generally, when a pension plan purchases an annuity from an insurer as a distribution of benefits, it is intended that the plan's liability for such benefits is transferred to the annuity provider. The Department's regulation defining the term ''participant covered under the plan'' for certain purposes under title I of ERISA recognizes that such a transfer occurs

[4] The Pension Annuitant's Protection Act of 1994, Pub. L. No. 103–401, 108 Stat. 4172 (1994) amended section 502(a) of ERISA to clarify the standing of pension annuitants to bring actions for fiduciary breaches that occurred. In addition, the Act specifies that a court may order appropriate relief to assure the annuitant's receipt of the amounts provided or to be provided by the annuity, plus reasonable prejudgment interest. The amendments made by the Act apply to any legal proceeding pending, or brought, on or after May 31, 1993.

[5] This standard does not apply to the purchase of annuities for plan investment purposes. As with any other ordinary investment decision, ERISA's fiduciary duty of prudence requires that the risk attendant to such products, in the context of the plan's investment portfolio, and its funding, liquidity and diversification needs, must be weighed against the promised return. Thus, fiduciaries may select such investments that involve greater risks, but that also provide an expected investment return that is commensurate with that greater risk. In this regard, the Department notes that in an investment contract with an annuity option, the standard described herein, while not applicable to the decision to invest in the investment product, nonetheless applies to the fiduciary's decision to exercise the annuity option.

[6] Under IRC § 4980, an excise tax of up to 50 percent may be imposed on the amount of any employer reversion from a qualified plan unless the employer establishes and maintains a qualified replacement plan to which assets are transferred, or provides certain benefit increases for participants.

when the annuity is issued by an insurance company licensed to do business in a State. 29 CFR 2510.3–3(d)(2)(ii). Although the regulation does not define the term ''participant'' or ''beneficiary'' for purposes of standing to bring an action under ERISA § 502(a), 29 U.S.C. 1132(a), it makes clear that the purpose of a benefit distribution annuity is to transfer the plan's liability with respect to the individual's benefits to the annuity provider.

Pursuant to ERISA section 404(a)(1), 29 U.S.C. 1104(a)(1), fiduciaries must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries. Section 404(a)(1)(A), 29 U.S.C. 1104(a)(1)(A), states that the fiduciary must act for the exclusive purpose of providing benefits to the participants and beneficiaries and defraying reasonable plan administration expenses. In addition, section 404(a)(1)(B), 29 U.S.C. 1104(a)(1)(B), requires a fiduciary to act with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use.

(c) Selection of Annuity Providers. The selection of an annuity provider for purposes of a pension benefit distribution, whether upon separation or retirement of a participant or upon the termination of a plan, is a fiduciary decision governed by the provisions of part 4 of title I of ERISA. In discharging their obligations under section 404(a)(1), 29 U.S.C. 1104(a)(1), to act solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits to the participants and beneficiaries as well as defraying reasonable expenses of administering the plan, fiduciaries choosing an annuity provider for the purpose of making a benefit distribution must take steps calculated to obtain the safest annuity available, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise. In addition, the fiduciary obligation of prudence, described at section 404(a)(1)(B), 29 U.S.C. 1104(a)(1)(B), requires, at a minimum, that plan fiduciaries conduct an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities. In conducting such a search, a fiduciary must evaluate a number of factors relating to a potential annuity provider's claims paying ability and creditworthiness. Reliance solely on ratings provided by insurance rating services would not be sufficient to meet this requirement. In this regard, the types of factors a fiduciary should consider would include, among other things:

(1) the quality and diversification of the annuity provider's investment portfolio;

(2) the size of the insurer relative to the proposed contract;

(3) the level of the insurer's capital and surplus;

(4) the lines of business of the annuity provider and other indications of an insurer's exposure to liability;

(5) the structure of the annuity contract and guarantees supporting the annuities, such as the use of separate accounts;

(6) the availability of additional protection through state guaranty associations and the extent of their guarantees. Unless they possess the necessary expertise to evaluate such factors, fiduciaries would need to obtain the advice of a qualified, independent expert. A fiduciary may conclude, after conducting an appropriate search, that more than one annuity provider is able to offer the safest annuity available.

(d) Costs and Other Considerations. The Department recognizes that there are situations where it may be in the interest of the participants and beneficiaries to purchase other than the safest available annuity. Such situations may occur where the safest available annuity is only marginally safer, but disproportionately more expensive than competing annuities, and the participants and beneficiaries are likely to bear a significant portion of that increased cost. For example, where the participants in a terminating pension plan are likely to receive, in the form of increased benefits, a substantial share of the cost savings that would result from choosing a competing annuity, it may be in the interest of the participants to choose the competing annuity. It may also be in the interest of the participants and beneficiaries to choose a competing annuity of the annuity provider offering the safest available annuity is unable to demonstrate the ability to administer the payment of benefits to the participants and beneficiaries. The Department notes, however, that increased cost or other considerations could never justify putting the benefits of annuitized participants and beneficiaries at risk by purchasing an unsafe annuity.

In contrast to the above, a fiduciary's decision to purchase more risky, lower-priced annuities in order to ensure or maximize a reversion of excess assets that will be paid solely to the employer-sponsor in connection with the termination of an over-funded pension plan would violate the fiduciary's duties under ERISA to act solely in the interest of the plan participants and beneficiaries. In such circumstances, the interests of those participants and beneficiaries who will receive annuities lies in receiving the safest annuity available and other participants and beneficiaries have no countervailing interests. The fiduciary in such circumstances must make diligent efforts to assure that the safest available annuity is purchased.

Similarly, a fiduciary may not purchase a riskier annuity solely because there are insufficient assets in a defined benefit plan to purchase a safer annuity. The fiduciary may have to condition the purchase of annuities on additional employer contributions sufficient to purchase the safest available annuity.

(e) Conflicts of Interest. Special care should be taken in reversion situations where fiduciaries selecting the annuity provider have an interest in the sponsoring employer which might affect their judgment and therefore create the potential for a violation of ERISA § 406(b)(1). As a practical matter, many fiduciaries have this conflict of interest and therefore will need to obtain and follow independent expert advice calculated to identify those insurers with the highest claims-paying ability willing to write the business.

Signed at Washington, DC, this 28th day of February 1995.

**Olena Berg,**

*Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.*

[FR Doc. 95–5321 Filed 3–3–95; 8:45 am]

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Monday
March 6, 1995

# Part VI

## Department of Health and Human Services

### Administration for Children and Families

## Department of Education

### Office of Elementary and Secondary Education

### Safe and Drug Free Schools Program; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families

**[Program Announcement No. ACF–93588.951]**

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

### Safe and Drug Free Schools Program; The Community Schools Youth Services and Supervision Grant Program, and The Family and Community Endeavor Schools Grant Program; Availability of Fiscal Year (FY) 1995 Funds and Request for Applications

**AGENCIES:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS), and the Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Announcement of the availability of funds and request for applications under the Family and Community Endeavor School Grant Program.

**SUMMARY:** The Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF) and the Safe and Drug Free Schools Program of the Office of Elementary and Secondary Education announce the availability of funds for competing discretionary grants under two programs established by the Family and Community Endeavor Schools Grant Program, Title III, Subtitle D of Pub. L. 103–322. The purpose of these programs is to prevent crime and violent behavior by providing academic, social and developmental services to children and youth during and after school hours, evenings, on weekends, and during holidays and the summer months.

This legislation mandates the implementation of two similar programs under Subtitle D: The Community Schools Youth Services and Supervision Grant Program (hereafter referred to as ''Community Schools'') and the Family and Community Endeavor Schools Grant Program (hereafter referred to as ''FACES''). As the needs of children, youth and communities can best be served by integrating the two programs, the Departments of Health and Human Services and Education have jointly developed this grant announcement. The two Departments intend to demonstrate that prevention strategies that bring together community-based organizations and schools in communities with high poverty rates, violent crime and significant juvenile delinquency have the greatest potential for preventing the involvement of children and youth in violent crime and other negative behaviors and for supporting their positive and healthy development.

Further, the Departments intend to demonstrate that, by concentrating the resources of schools and community-based organizations in well-defined rural, suburban and urban communities that face great social and economic problems, the positive effect of the programs for a core number of children, youth and families will be intensified. The HHS and ED also expect to collaborate with the National Institutes of Health to offer grantees the opportunity and the resources to participate in a rigorous assessment of the implementation and impact of a small number of projects.

This announcement describes the grant application requirements and processes for both programs and allows applicants to apply for either program separately or both programs jointly through submission of one application. This single application has been developed to further link the two programs, encourage local consortia to apply for both programs, and to help reduce the application burden.

**DATES:** The closing date for RECEIPT of applications under this announcement is May 5, 1995. Please note that this is a departure from the traditional approach of using postmarks instead of receipt date to determine eligibility of applications for review.

**ADDRESSES:** Application receipt: Department of Health and Human Services, ACF Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF–93588.951.

**FOR FURTHER INFORMATION ON THE COMMUNITY SCHOOLS PROGRAM CONTACT:** Department of Health and Human Services, AC/ACYF, Family and Youth Services Bureau, P.O. Box 1182, Washington, D.C. 20013. Telephone (202) 205–8076. Information is also available on the ACF Electronic Bulletin Board. To access, set modem to No Parity, 8 Data Bits, 1 Stop Bit and dial 1–800–627–8886. Under ''Program Office Subsystems, Family and Youth Services Bureau,'' relevant files are found under COMMSCH.

**FOR FURTHER INFORMATION ON THE FACES PROGRAM CONTACT:** Department of Education, OESE, Safe and Drug Free Schools Program, 600 Independence Avenue, SW., Washington, DC. 20202. Telephone (202) 260–3954.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of six parts. Part I discusses the importance of addressing the developmental needs of children and youth, and provides background information on the legislative history and purposes of these programs. Part II describes the three programmatic priority areas for which applications are being solicited: The Community Schools Program; the FACES Program, and the Joint Community Schools/FACES Program. Part III describes the application evaluation criteria that will be used to review grant applications. Part IV describes the application process and how funding decisions will be made. Part V provides instructions for the development, assembly and submission of applications. Part VI provides information on the State Single Points of Contact, the Table of Community Schools Funding Allocations by State and all the necessary forms and instructions for applying for a grant under this announcement. *No additional materials are needed to submit an application.*

Applicants should note that grants to be awarded under this program announcement are subject to availability of funds.

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## Part I. General Information

### *A. Legislative Authority, Purposes and Goals, and Funding*

Congress enacted the Family and Community Endeavor Schools Grant Program as Subtitle D of Title III of the Violent Crime Control And Law Enforcement Act of 1994 (Public Law 103–322). This subtitle includes two programs: Community Schools, administered by the Department of Health and Human Services; and FACES, administered by the Department of Education. Congress intended that the legislation for these programs offer, through public-private partnerships between government and community-based organizations, an opportunity to empower distressed and disconnected communities to prevent crime and violent behavior by:

Developing their resources and abilities in order to meet the needs of children,

Forging innovative solutions to the challenges confronting the development of the children in such communities, and

Creating environments where children grow up learning a healthy respect for themselves, for neighbors and for their communities.

The legislation mandates that public-private partnerships, including community-based organizations and schools, should provide a broad spectrum of supervised recreational, extracurricular, and academic programs. Recreational activities can include family-focused outings, a safe place to go, games, organized team or individual sports, supervised play and community service. Extracurricular and academic activities can include curriculum-based supervised educational activities, work force preparation, entrepreneurship experiences, cultural programs, health education, social activities, and tutorial and mentoring programs. The legislation also mandates that programs train teachers, administrators, social workers, guidance counselors, parents and school volunteers to provide concurrent social services for at-risk students.

Subtitle D of the Family and Community Endeavor Schools Grant Program is also designed to stimulate collaborative efforts that will assist urban, suburban and rural communities and neighborhoods in identifying the specific needs of their children, youth and families, and in using their resources and abilities to develop and implement programs that build on community strengths, respond to identified needs and reduce crime and violence.

Under the Community Schools program, HHS will make grants to private, community-based, nonprofit organizations in communities with significant poverty and juvenile delinquency for the provision of after-school, evening, weekend, holiday, and summer education and recreation programs. The total authorization for HHS for FY 1995 is $25.9 million. The amount of funds available to community-based organizations in each State is listed in the Table of Community Schools Funding Allocations by State (Part VI, Appendix B). In accordance with the Act, this distribution is based on the proportionate number of children in each State who live in families with incomes below the Federal poverty line. These funds do not, however, go to the States or pass through the States. Rather, funds will be awarded directly to successful community-based applicants in each State. Funds have also been set aside for grants to Federally recognized Indian tribes; for administrative purposes as allowed by the law; for training and technical assistance; and for evaluation.

Under the FACES program, ED will award grants to local educational agencies or community-based organizations to improve the overall academic and social development of at-risk students in public schools in communities with significant poverty, violent crime, and juvenile delinquency. The total authorization for FACES for FY 1995 is $11.1 million.

**Note:** A Notice of Final Definition, Maximum Grant Award and Selection Criteria for the FY 1995 FACES Program is published by the Department of Education elsewhere in this issue of the **Federal Register**.

### *B. Development of the Program Announcement*

In accordance with Congressional intent to develop programs that respond to the needs of individual children, youth and communities, HHS and ED have conducted 37 focus groups, involving more than 500 participants in Washington, DC, and each of the 10 Federal regions. A day for public comment was also held in Washington, DC.

Focus group participants have included more than 100 youth; parents and other residents of communities with significant juvenile delinquency and high rates of poverty; academicians and researchers; service providers, including representatives from youth serving organizations; local and State officials; and foundation representatives. Focus groups were used to (1) provide information on the Community Schools and FACES programs and on the Federal youth development agenda; and (2) obtain information on important principles related to serving children and youth; on designing and implementing youth programs and making collaborations work; on the training and technical assistance needs of youth programs; and program evaluation.

Letters, papers and program descriptions were also solicited from a variety of sources across the country. Additionally, an Interdepartmental Work Group on Violence was convened in 1994 to obtain information about the best ways to serve youth, prevent violence and coordinate responses across Departments. These sessions and materials have led to the development of principles which guide this program announcement. The principles are explained below.

### *C. Development of Children and Youth Within the Context of Their Social Environment*

Children and youth pass through a series of developmental phases which advance them from total dependence upon their parents and families to competent and independent adulthood. They struggle with adults for independence, affiliate with peers, take risks, and seek their place within the world. They need the help and support of family and community while they make the transition from adolescence to adulthood.

Most children in the United States are successful at making the transition from childhood to adolescence to adulthood. But for many, the crime and violence of their environment can effectively rob them of their childhood and deprive them of opportunities to carry out the developmental tasks associated with childhood and adolescence. With few outlets for recreational and creative activities and few positive role models, children and youth in many poor communities become involved in the violent activities of gangs, drugs and alcohol. The involvement of children at increasingly younger ages in these dangerous activities and the overall increase in youth violence is alarming:

Between 1988 and 1992, arrests of juveniles increased by 47 percent, more than twice the increase for adults.

Juvenile arrests for murder increased by 51 percent, compared with a nine percent increase for adults.

Between 1990 and 1992, the number of juveniles under age 15 arrested for violent crimes increased 33 percent.

Between 1988 and 1992, the number of females under age 18 arrested for violent crimes increased by 63 percent.

Violence and crime also invade schools. Nationally, nearly 3 million thefts and incidents of violent crime occur on or near school grounds annually. Nearly one in five high school students have reported carrying a weapon at least once in a 30 day period, and nearly 8 percent of 9–12 year olds have reported being involved in a fight requiring treatment by a doctor or nurse. Schools in many poor communities find it increasingly difficult to educate children and youth because of the problems that many bring to school.

The Department of Education has found that, despite the increasing violence among children and youth, there are safe schools even in communities where the worst crime and drug problems exist. An element common to many safe schools is the adoption of comprehensive strategies for schools and communities aimed at the prevention of crime and violence through a wide array of educational and professional activities and early intervention services. Comprehensive strategies include the development of education and training programs for students, staff, and community members; conflict resolution; peer meditation; the teaching of law and legal concepts; a school ethic that sets high standards for students and values their contribution; efforts to involve families in the community in developing programs; and implementation of innovative activities such as community service projects designed to rebuild safe and healthy neighborhoods and increase students' sense of individual responsibility.

*D. Lessons From Consultation*

Service providers and other experts have identified a number of shortcomings in past approaches to the funding of services to children and youth:

1. Public and private community-based service systems are increasingly unable to compensate as families become more isolated from traditional sources of support. Many parents are stressed and squeezed for time, whether because both parents are working, a single parent is struggling to combine work and parenting, or simply because they lack traditional neighborhood and extended family support. As a result, parents are turning to under-funded and over-burdened community agencies, including schools, day care centers, youth serving organizations and recreation centers to fulfill their children's social and developmental needs and to provide the requisite supervision needed to ensure their safety.

2. Many publicly funded programs have not engaged a broad range of community services nor responded to the reality of youth's experiences, goals, strengths and needs.

3. Historically, youth programs have focused on intervening once youth have participated in delinquent or negative behaviors, rather than on preventing these behaviors and supporting youth during the critical transition from childhood through adolescence.

To address these shortcomings, youth, practitioners and other experts identified the following principles as characteristic of effective programs. Applicants are strongly encouraged to draw on these principles in designing their application:

1. Promote the positive development of children and youth. Program strategies and activities must be grounded within a developmental framework, begin early in a child's life, be sustained over a long period of time, and be geared to children's individual needs.

2. Involve children and youth in positive peer group interactions and constructive, developmentally appropriate activities. Programs should ensure the availability of age appropriate, constructive activities that are safe, accessible, fun and culturally relevant. Involving children and youth in the design and implementation of the activities will ensure that they are interesting and well attended.

3. Promote learning and academic achievement. Education can promote responsible citizenship by supporting the development of, and adherence to, high standards for academic and social performance among children and youth. The involvement of parents and families in the educational attainment of their children can, through interaction, strengthen family and community bonds. In addition, programs can broaden and/or enhance the academic and social experiences of parents by providing adult basic education courses, parenting classes and positive parent-teacher interactions.

4. Foster sustained relationships between children, youth and caring adults. Children and youth need individualized attention and interaction with a caring and supportive adult over an extended period of time. These needs are best met by parents, but volunteers, program staff, social workers and/or teachers can perform a valuable role by acting as mentors, role models and friends to children and youth.

5. Promote the long-term development of neighborhood and communities. Strong communities yield positive development for children and youth. In developing programs, local communities should place priority on developing local leadership, on involving children, youth and their families as resources in the community building process, and on providing needed services to families as well as children and youth.

6. Emphasize flexibility and functional collaboration in program design. Residents and service providers within the community must be involved in the design and implementation of the program to ensure that it becomes an integral part of the community. Collaborations should be functional; letters of agreement are not enough. Each collaborating agency should be actively involved and should provide an essential component of service to the program.

**Part II. Priority Areas**

Part II contains three options. Eligible organizations can choose to apply for a Community Schools Youth Services and Supervision Grant Program (Priority Area A), for a Family and Community Endeavor Schools Grant Program (Priority Area B), *OR* for a Joint Community Schools/FACES Program (Priority Area C). Each priority area description includes information on eligible applicants, program purpose and general legislative requirements. Part II also includes information relevant to all priority areas on Program Evaluation; Duration of the Project; Federal Share of the Project; and Grantee Share of the Project.

*Priority Area A: Community Schools Program*

Eligible Applicants: Private, non-profit, locally initiated community-based organizations (CBOs) with a 501(c)(3) status that are operated by, or are members of, a consortium of service providers consisting of representatives from five or more of the following categories: (1) Residents in the community; (2) business and civic leaders actively involved in providing employment and business development opportunities in the community; (3) educators; (4) religious organizations, which shall not provide sectarian instruction or worship in connection with an activity funded under these grants; (5) law enforcement agencies; (6)

public housing agencies; (7) other public agencies; and (8) interested parties. It is also strongly recommended that youth and local youth-serving agencies be represented.

A single community-based organization or consortium must be the grantee and must assume responsibility for administrative and fiscal management and reporting. A community-based, private, non-profit organization that applies for funds, but is not a consortium, must involve other community organizations as equal partners in the development and implementation of the project. Consortium members are expected to make a significant contribution to the project.

Federally recognized Indian Tribes are also eligible for funding under this priority area.

Program Purpose: The Administration on Children, Youth and Families (ACYF) will award between 50 and 75 grants to community-based organizations for $250,000 to $500,000 per year for implementation of the Community Schools Program, although in some cases, applications for less than $250,000 will be considered for funding. (See Part II, Section F.) Approximately three grants will be awarded to Federally-recognized Indian tribes.

Successful grantees will receive a grant to operate the program for five years, subject to the availability of funds, satisfactory progress, and determination that continued funding would be in the best interest of the government. The grantee's share of project costs (non-Federal share) is 25 percent of total project costs for FYs 1995 and 1996. For FY 1997 this share increases to 30 percent. For FY 1998 and beyond the non-Federal share of project costs is 40 percent.

The Community Schools legislation requires that communities organize into consortia. The consortia are responsible for community coordination and collaboration to enhance the ability of the community to meet the developmental needs of children and youth. Developmentally appropriate activities can take place after school, during the evenings, on weekends and holidays during the school year and as daily full- or part-day programs during the summer months.

Applications developed in response to this priority area should articulate a vision for children, youth and their families and include community-wide strategies and interventions designed to prevent crime, enhance academic achievement and change environmental factors, circumstances and attitudes which put children and youth at risk of unhealthy and destructive behaviors.

Eligible Community: Applicants must show the existence of significant poverty, significant crime and juvenile delinquency in the community to be served. Applicants must also demonstrate that they are proposing to serve an identifiable community or neighborhood with boundaries that are generally recognized by the residents in the community and that is small enough to allow a concentration of resources and the potential for measurable effects.

Local public schools are established institutions in every community, and Congress has identified them as logical program sites. In some communities, however, public schools may not be the ideal site. The legislation, therefore, identifies colleges or universities, local or State parks or recreation centers, churches, or military bases as possible options, if they are easily accessible to children in the community and comply with all local ordinances. Other options include space in community-based organizations, including youth serving agencies.

Population to be Served: The Community Schools legislation identifies children and youth, ages 5 through 18 who reside in the community, as eligible for participation in the program. While applicants may elect to serve children and youth in the entire 5 through 18 age range, they are encouraged to identify a particular developmentally-defined age group within that range to receive services to maximize the impact of the program.

Other Requirements: Based on past demonstration efforts, ACYF has learned that short-term interventions do not result in significant effects on children and youth. Therefore, programs should be designed so that children and youth who are initially chosen to participate can continue to participate for a sustained period of time as they grow older and as the program develops over the five year period. Attention must be given to maintaining the active participation of children and youth if they are to receive long-term benefits. The applicant must assure, as required by the legislation, that the program will maintain an average attendance rate of enrolled participants of not less than 75 percent. The program should identify a system for encouraging and maintaining participant attendance and a policy for the recruitment of new children and youth as needed.

Fiscal Control and Requirements: No more than five percent of Federal funds may be used to pay for the administrative cost of the program. This maximum may not be exceeded even if an agency's negotiated indirect cost rate is greater than five percent. Indirect costs above the allowable five percent may be used as part of an applicant's non-Federal share contribution.

No Federal funds may be used to provide sectarian worship or sectarian instruction.

Applicants must address all of the Application Evaluation Criteria found in Part III below.

*Priority Area B: FACES Program*

Eligible Applicants: Local educational agencies (LEAs) and community-based organizations are eligible to receive grants under this program. A community-based organization means a private, non-profit organization which is representative of a community, or significant segments of a community, and which provides educational or related services to individuals in the community.

Program Purpose: The Department of Education will award approximately 30 grants to local educational agencies or community-based organizations to improve the overall academic and social development of at-risk students. The minimum grant award is $250,000 and the maximum is $500,000 for each 12-month period.

Successful grantees will receive a grant to operate the program for five years, subject to the availability of funds, satisfactory progress, and determination that continued funding would be in the best interest of the government. The applicant's share of project costs (non-Federal share) is 30 percent of total project cost.

In order to receive an award, eligible applicants must:

(1) Identify an eligible community to be assisted.

(2) Develop a community planning process that includes parents and family members, local school officials, teachers employed at schools within the eligible community, public housing resident organization members, when applicable, and public and private non-profit organizations that provide education, child protective services, or other human services to low-income, at-risk children and their families.

(3) Develop a concentrated strategy for implementation of a community planning process that targets clusters of at-risk children and youth in the eligible community.

It is strongly recommended that youth and local youth-serving agencies be included in the planning process.

**Note:** A Notice of Final Definition, Maximum Grant Award and Selection Criteria for the FY 1995 FACES Program is

published in the ED section of this issue of the **Federal Register**.

Program Requirements: Applicants must propose to develop or expand programs designed to improve the academic and social development of at-risk students at selected public schools in eligible communities. To accomplish this goal, each grantee must institute a collaborative structure that trains and coordinates the efforts of teachers, administrators, social workers, guidance counselors, parents and school volunteers to provide concurrent social services.

Applicants may also propose a variety of optional activities to serve the comprehensive needs of at-risk students in the community. These activities may include, but are not limited to, homework assistance and after-school programs, including educational, social, and athletic activities; nutrition services; mentoring programs; family counseling; and parent training programs.

Eligible Community: Applicants must demonstrate that they are proposing to serve an identifiable community or neighborhood with boundaries that are generally recognized by the residents in the community and that is small enough to allow a concentration of resources and the potential for a measurable impact. The community must have a significant level of poverty, violent crime and juvenile delinquency.

Services for at-risk students must be offered at selected public schools in the eligible community.

Other Requirements: Applications developed in response to this priority area must contain a comprehensive plan describing the program that is designed to improve the academic and social development of at-risk children in schools in the community. The plan should articulate a vision for children, youth and their families and include community-wide strategies and interventions designed to prevent crime and change the environmental factors, circumstances and attitudes which put children and youth at risk of unhealthy and destructive behaviors.

Applicants must provide evidence of support for accomplishing the objectives of the comprehensive plan from community leaders; a school district; local officials; and other organizations that the applicant determines to be appropriate.

Applicants must also provide an estimate of the number of children in the eligible community expected to be served under the program.

Assurances: Applicants must provide the following program specific assurances: (1) That the applicant will use grant funds to implement the program requirements; (2) that the applicant will comply with any evaluation requested as part of the FACES program, any research effort authorized under Federal law, and any investigation by the Secretary; (3) that the applicant shall prepare and submit to the Secretary an annual report regarding any program conducted with these funds; (4) that funds made available under the FACES program shall be used to supplement, not supplant other federal funds that would otherwise be available for activities funded under this program; and (5) that the applicant will maintain separate accounting records for the program.

In addition, the standard assurances described in Part V, Section A–4 must be included. Forms for these assurances are included in this application package.

Applicants must address all of the relevant Application Evaluation Criteria found in Part III, below.

*Priority Area C: Joint Community Schools/FACES Program*

In order to receive an award under this priority, applicants must meet all requirements of both the FACES and the Community Schools Programs (Priorities A and B).

Eligible Applicants: Private, non-profit, locally initiated community-based organizations (CBOs) with a 501(c)(3) status that are operated by, or are members of, a consortium of service providers consisting of representatives from five or more of the following categories: (1) Residents in the community; (2) business and civic leaders actively involved in providing employment and business development opportunities in the community; (3) educators; (4) religious organizations, which shall not provide sectarian instruction or worship in connection with an activity funded under these grants; (5) law enforcement agencies; (6) public housing agencies; (7) other public agencies; and (8) interested parties. It is also strongly recommended that youth and local youth serving agencies be represented.

Applicants requesting funding under this priority area must work in partnership with a local educational agency and must develop an in-school component as part of the proposed program.

A single community-based organization or consortium must be the grantee and must assume responsibility for administrative and fiscal management and reporting. A community-based, private, non-profit organization that applies for funds, but is not a consortium, must involve other community organizations as equal partners in the development and implementation of the project.

Federally-recognized Indian Tribes are also eligible for funding under this priority area.

Program purpose: The ACYF and the OESE will award approximately 20 grants to community-based organizations for $500,000 to $1,000,000 per year for implementation of Joint Community Schools/FACES Programs. Because of limited dollars, most programs will be funded at the lower end of this range. Successful grantees will receive funding to operate the program for five years, subject to the availability of funds, satisfactory progress, and determination that continued funding would be in the best interest of the government.

The intent to fund a significant number of joint projects reflects the Departments' commitment to collaboration. It is intended to provide greater flexibility and facilitate comprehensive community-wide interventions that will meet the developmental needs of children and youth in a holistic manner and prevent crime and violence. All stakeholders, including teachers, parents, social service providers, private sector and community leaders should be involved in the project as equal partners, which should result in community ownership of the program. The consolidation and joint operation of the program should result in a comprehensive and coherent continuum of care for children and youth on a daily and long-term basis, including academic, social and recreational services throughout the entire school day, into the evening hours, on weekends and holidays and during the summer months.

Projects funded under the Joint Community Schools/FACES program should provide a continuum of care that will significantly increase opportunities for children and youth to develop into physically and emotionally healthy, contributing members of society. In taking a developmental approach, these joint programs are expected to include plans to identify and meet the social and academic needs of children and youth that will be served jointly by the community and the school in a safe and violence-free environment.

Eligible Community: Applicants must demonstrate that they are proposing to serve an identifiable community or neighborhood with boundaries that are generally recognized by the residents in the community and that is small enough to allow a concentration of resources

and the potential for a measurable impact. The community must have a significant level of poverty, violent crime and juvenile delinquency.

Population to be Served: Children and youth, ages 5 through 18 who reside in the community, are eligible for participation in the program. While applicants may serve children and youth in the entire 5 through 18 age range, they are encouraged to identify a particular developmentally-defined age group to receive services to maximize the impact of the program.

Budget and Reporting: A single budget may be submitted, however, the budget must separate projected costs and non-Federal share for Community Schools and FACES programs as the required non-Federal share varies based on the funding source. Instructions in Part V below describe how this should be done. Applicants willing to comply with the highest non-Federal share requirements for a given year for both programs do not have to separate out Community Schools and FACES budgets.

The two Departments are currently developing financial and programmatic reporting requirements that will eliminate duplication and ease the reporting burden. Successful grantees will receive instructions on these requirements.

Applicants must address all of the Application Evaluation Criteria found in Part III, below.

*Priority Area D: Program Evaluation*

The following section describes the evaluation requirements that should be addressed by applicants, and the opportunities that may be available for organizations that successfully compete for grants under this program announcement. Applicants should also note that a national evaluation involving a sample of projects and cross-site data collection and analysis may be conducted by the Federal government.

*All Applicants*

- All applicants must agree to cooperate with any national data collection, research and evaluation activities that are funded and/or coordinated by the Administration for Children and Families or the Office of Elementary and Secondary Education. In addition, all applicants must demonstrate that key staff have the knowledge and experience needed to participate in these efforts.
- All applicants are required to submit a specific plan for the evaluation of their individual projects. The plan should provide for the collection and documentation of baseline, progress and outcome data on all phases of their projects, including planning and implementation; collaboration and coordination; on program participants, their family and neighborhood environments; on the nature, availability and access to services and resources; intensity and duration of services to be provided and on the possible effects of the programs on children, youth and community.

Grantees are required to periodically collect and maintain data that can be used to report annually to Congress on the number of children participating in the program; the academic achievement of such children; the school attendance and graduation rates of such children; and the number of such children being processed by the juvenile justice system. Technical assistance regarding the implementation of these evaluation activities will be provided to programs that receive grants under this program announcement.

*Applicants for Joint Community Schools/FACES Programs*

- Applicants for the Joint Community Schools/FACES Program are required to submit detailed plans for independent, third-party evaluations. The plans should include both implementation and impact components and use scientifically valid and rigorous evaluation designs. Applicants for the joint program must set aside a portion of their proposed budgets, but no more than 15% of the total budget, to carry out the evaluation plan.

Additional funding for such an evaluation may be available from private foundations and/or the Federal government. This possibility of receiving these additional funds will be explored with successful applicants.

- Applicants for the Joint Community Schools/FACES Program may be eligible to apply to the National Institutes of Health (NIH) for a Research Demonstration Grant to Enhance Services and Assessment. These grants would support program development and assessment. NIH has an interest in intervention research aimed at the prevention of aggressive behavior and violence and has set aside $1.8 million in FY 1995 for grants in this area. The funds will be awarded to researchers who establish partnerships with prospective applicants to the Joint Community Schools/FACES Program to enhance local interventions for at-risk youth and conduct a rigorous study of the implementation and impact of the interventions. This partnership would allow successful grantees to use all funds awarded under this announcement for program purposes and use the NIH funds for the evaluation. It is expected that fewer than five (5) of these research demonstration grants will be funded.

Major criteria for the award of the NIH funds will be research, training and achievements of the Principal Investigator and other research staff; demonstration of a collaborative relationship between the research organization and the Joint Community Schools/FACES Program applicant(s); and the extent to which representatives from the community are involved in all phases of the research from design through analysis and reporting. Technical assistance is available from NIH to Joint Community Schools/FACES Program applicants in forming these partnerships with interested and qualified researchers as well as in developing their project concept, plans and research methodology.

Since research plans must be integrated into the program initiative from the outset, it is important that interested applicants immediately contact James Breiling, Ph.D., Violence and Traumatic Stress Research Branch, National Institute of Mental Health, 5600 Fishers Lane, Parklawn Building 10c-24, Rockville, MD 20857. Dr. Breiling can be reached by telephone at (301) 443-3728 or by FAX at (301) 443-4045.

*Priority Area E: Duration of the Project*

This announcement solicits applications for five-year projects (60 months). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 60-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

*Priority Area F: Federal Share of the Project*

The range of the Federal share of project costs is as follows:

Priority Area A, the Community Schools Program: The preferred range of Federal share for projects is between $250,000 and $500,000 for each 12-month period, but smaller grants will be entertained on an exception basis. All applications will be reviewed under the criteria found in Part III below and must show collaboration with and linkages to other community organizations. Applicants should refer to Part VI, Appendix B: Table of Community

Schools Funding Allocations by State, to identify the amount of funds available for community-based organizations in their State.

Priority Area B, FACES Program: The range of Federal Share for projects is between $250,000 and $500,000 for each 12-month period.

Priority Area C, Joint Community Schools/FACES Program: The range of Federal Share for projects is between $500,000 and $1,000,000 for each 12-month period. Most of the grants will be funded at the lower end of the range.

*Priority Area G. Grantee Share of the Project*

The applicant share of project is as follows:

Priority Area A, the Community Schools Program: The required non-Federal share is 25 percent of total project costs (i.e., Federal and non-Federal) for FYs 1995 and 1996, 30 percent for FY 1997, and 40 percent for FYs 1998 and 1999. For example, a project requesting $250,000 in Federal funds must include a match of at least $83,333 (25 percent of a total project cost of $333,333) for FYs 1995 and 1996. For FY 1997, the non-Federal match would be at least $107,142 for a total budget of $357,142. For FYs 1998 and 1999, the match is $166,666 per year for a total budget of $416,666 per year.

Priority Area B, The FACES Program: The applicant share of project costs for the FACES Program is 30 percent of total project costs.

Priority Area C, Joint Community Schools/FACES Program: Applicants must fulfill the non-Federal requirements for each individual program. See instructions in Part V, Section A.2. regarding construction of the budget.

For all applications submitted under this program announcement, at least 15 percent of the non-Federal match must be provided from private or nonprofit sources. The non-Federal share may be met by cash or in-kind contributions, fairly evaluated, including personnel, plant, equipment, and services. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. For the Community Schools Programs, however, funds appropriated by Congress for the activity of any agency of an Indian Tribal government or the Bureau of Indian Affairs of any Indian lands may be used to provide the non-Federal share for the cost of these programs.

Any applicant that does not provide the required percentage of non-Federal share will not be funded.

**Part III. Application Evaluation Criteria**

Applications submitted in response to this program announcement will be read and evaluated based on the application evaluation criteria. The point values following each criterion indicate the numerical weight each will be accorded in the evaluation. The information that follows each criterion includes those areas that applicants must address in their proposals.

Applicants should organize and present the Program Narrative section of the application in the order of the five Application Evaluation Criteria. It has been our experience that applications that are not organized according to the criteria and do not address all the criteria generally rate very poorly.

*Criterion 1: Objectives and Need for Assistance (15 Points)*

- Demonstrate the need for the assistance and identify existing gaps in services, infrastructure and opportunities that, if filled, will support the academic and social development of children and youth in the community and reduce crime and violence.
- Clearly state the measurable goals and objectives of the proposed project.
- Identify the geographic area to be served. Describe what makes the area an identifiable community or neighborhood and demonstrate that the community is small enough to allow a concentration of resources that will result in an appreciable difference for children, youth and the community itself.
- Provide data on the number, gender and ethnic/cultural background of the children and youth in the area. (This applies only to the use of funds for Community Schools and Joint Community Schools/FACES Programs.)

*Criterion 2: Approach (30 Points)*

- Describe the underlying child and youth development principles that will be employed as a framework for the program and discuss why this framework was chosen and how it will lead to the reduction of crime and violence. Identify the age group(s) of the children and youth to be served and explain the reasons for that choice. Indicate the period of time over which children and youth will receive services.
- Describe in detail how the applicant will achieve each of the goals and objectives listed above in Objectives and Need for Assistance and identify any unusual features of the program.
- Describe the continuum of services and activities that will be provided and indicate how those services will meet the academic, social and developmental needs of the participants and reduce crime and violence.
- Indicate how services and activities will take into account and be sensitive to cultural differences of children and youth being served, including racial and ethnic background, gender, religious beliefs, physical capacity and sexual orientation. Assure that funds will be used to provide academic programs, supervised sports programs and extra-curricula activities. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Describe if and how applicant will arrange for the provision of needed preventive health services and treatment, including initial physical examinations, first aid training, nutritional guidance, and substance abuse treatment where appropriate. Indicate how applicant will identify other funding sources for these services, using funds under this grant program for these purposes only as the dollar of last resort. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)
- Identify the physical location(s) of the program and assure that public schools or other local facilities will be used. FACES applicants must propose to use public school facilities. Demonstrate that the location and the services are safe and secure and accessible to children, youth and families, in terms of days and hours of operation and sensitivity to the population served.
- Describe the consortium. Provide an agreement signed by each consortium member that identifies the organizational structure of the consortium including the overall leadership, membership requirements and responsibilities, decision-making procedures and fiscal and programmatic commitments, including generation of local support and contributions to non-Federal share. Identify a strategy to coordinate and deliver services between schools and community-based organizations, including youth-serving organizations; address fiscal, programmatic and other barriers to coordination; and indicate how these barriers will be addressed. Provide assurance that community leaders, businesses, local education agencies, local officials, State officials, Indian Tribal government offices and other appropriate organizations support the consortium. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Provide information that demonstrates the effort to generate local support for the program from community leaders, a school district, local officials and other organizations that the applicant determines to be appropriate.

• List State, Federal and foundation programs with which the applicant has coordinated, including Family Preservation and Family Support State planning efforts, Corporation for National and Community Service Projects, formally designated Empowerment Zones and Enterprise Communities, and/or the Pulling America's Communities Together (PACT) planning process. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Indicate to what extent a community planning process has occurred and the extent of the planning effort that still remains to be accomplished. Include information on the process and timing for the phase-in of services and other program components. Provide information on the manner in which any of the following groups have been or will be included in the planning and implementation of this effort: children, youth and family members; local school officials and teachers; business and civic leaders; religious organizations; museums, cultural and arts organizations; parks and recreation organizations; juvenile justice, law enforcement and community policing representatives; community residents, neighborhood associations and public housing groups; public and private non-profit organizations that provide education, child protective services, or other human services; and other appropriate entities such as social service, health and mental health agencies. Identify barriers to participation and indicate how those barriers will be overcome.

• Describe the strategy for recruiting children and youth into the program, including a strategy for recruiting those children and youth not connected to the school system. If appropriate, indicate how applicant will deliver services to the youth and/or family through outreach activities and home visits. Describe the terms and conditions for participation of children and youth, including mechanisms for obtaining written permission from parents or guardians and securing an application for participation. Describe the mechanism for assuring that an average attendance rate of not less than 75 percent is maintained for enrolled participants. In addition, describe the policy for identifying children or youth who are deemed a danger to themselves or others and for referring them to other more appropriate services. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Identify a collaborative structure that trains and coordinates efforts of administrators, social workers, guidance counselors, parents, teachers and school volunteers.

• Identify how youth, community volunteers and staff of community-based organizations will be trained. Provide assurance that applicant will cooperate and participate in training and technical assistance activities provided or sponsored by HHS. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Describe procedures for maintaining confidentiality of records on individual children, youth and families served. Identify how pertinent information about individuals can be appropriately shared with service providers and describe how data collection on program participation and will be conducted in a manner consistent with Federal regulations governing pupil privacy. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

*Criterion 3: Results or Benefits Expected (15 Points)*

• Describe the long and short term outcomes of the program. Indicate, in measurable terms, appropriate indicators for assessment of program implementation and impact.

• Estimate the number and characteristics (gender, ethnicity and/or racial group, ages, academic standing, etc.) of the children and youth that will benefit from this project. (FACES applicants need only supply the number of children and youth to be served.)

*Criterion 4: Program Evaluation (15 Points)*

• Provide assurance that the applicant will cooperate with any data collection, research or evaluation efforts independently funded or sponsored by HHS and/or ED.

• Provide an evaluation plan for the proposed project that is thorough, feasible and appropriate. This evaluation must include collection of baseline data and identification and tracking of indicators that will show progress in program implementation and attainment of outcomes. These data should be collected in the areas of program planning; collaboration and coordination; and program implementation, including intensity, duration and location of services provided. Applicants for the Community Schools and Joint Community Schools/FACES programs should also collect baseline data on individual children and youth, their families and neighborhood environments. Applicants for FACES programs must include a plan for the assessment of social and academic achievement of children and youth served.

• Provide information on how the program will periodically collect and maintain data that can be used to report annually to Congress on the number of children participating in the program; the academic and social achievement of such children; the school attendance and graduation rates of such children; and the number of such children being processed by the juvenile justice system.

• Applicants applying for a Joint Community Schools/FACES Program must provide a plan for a third-party evaluation that is comprehensive; includes a rigorous scientifically valid evaluation design; and is capable of contributing to the state of knowledge in this field. Provide information on experience of the third-party evaluator.

*Criterion 5: Staff Background and Organizational Experience (20 Points)*

• Identify the skills, experience and educational requirements of key staff and indicate how they are relevant to the objectives of the project. Include résumés of individuals already chosen for positions. Identify recruitment strategies that will be used to identify potential staff and volunteers, especially those that will be used to hire staff that reflect or come from the community.

• Demonstrate the ability to effectively manage the project including the ability to lead community prevention efforts, coordinate activities with schools and other agencies and participate in or develop evaluation activities.

• Provide assurances that staff-to-participant ratio (including volunteers) is appropriate to the activities and service provided. Demonstrate that this ratio reflects the opportunity for children and youth to develop positive, consistent and nurturing relationships with adults. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

*Criterion 6: Budget Appropriateness (10 Points)*

• Discuss the costs of the proposed project in terms of children, youth and neighborhoods served. Include funds in the budget, as appropriate, for training

and technical assistance, evaluation and the cost of up to 3 annual trips to Washington, D.C. for two people to participate in meetings and conferences.

• Explain and justify, in terms of amount and benefits to be derived, any use of Federal funds for minor renovation of existing facilities or for health or substance abuse treatment. Demonstrate that no more than five percent of Federal funds will be used to pay for the administrative costs of the program, especially if the applicant's approved indirect cost rate is higher than five percent. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Describe the fiscal control and accounting procedures that will ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement. Assure that competitive procedures will be used when purchasing contracting or otherwise providing goods, activities and services.

• Provide assurances that no funds from this project will be used to provide sectarian worship or sectarian instruction. (This applies only to use of funds for Community Schools and Joint Community Schools/FACES Programs.)

• Provide evidence that the applicant can and intends to generate the local financial and in-kind support, service and commitments that will be required for non-Federal match over the life of the project. Provide a description of charitable, private and non-profit resources that will be obtained to support the program.

## Part IV. Application Process

### *A. Application Requirements*

To be considered for a grant under this program announcement, applications must be submitted on forms found in Part VI, Appendix C, and in accordance with guidance provided below. The application must be signed by an individual authorized to act for the applicant agency and assume responsibility for obligations imposed by the terms and conditions of grant award.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization with legal responsibility for the grant.

Any non-profit organization submitting an application must submit proof of its non-profit status with its application. Proof can include a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* a copy of the currently valid IRS tax-exemption certificate, *or* a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

### *B. Paperwork Reduction Act of 1980*

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for grant applications under OMB Control Number 0348–0043.

### *C. Notification Under Executive Order 12372*

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 19 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCS are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain''rule.

When comments are submitted directly to ACF, they must be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix A below.

### *D. Availability of Forms and Other Materials*

To be considered, each application must be submitted on the forms provided in Part VI, Appendix C. The forms may be reproduced, as needed.

### *E. Application Consideration*

All applications will be screened to determine eligibility of the applicant. Applications submitted by ineligible applicants will not be reviewed or considered for funding. Applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review against the specific Application Evaluation Criteria contained in Part III of this announcement. This review will be conducted in Washington, D.C. by teams of experts knowledgeable in the areas of child and youth development, education, drug and violence prevention, juvenile justice, social services, community development and related areas. The results of the competitive review will be analyzed by Federal staff who will recommend applications for funding as either joint or single program grants to the Assistant Secretary for Elementary and Secondary Education and/or the Commissioner for the Administration on Children, Youth and Families.

The Assistant Secretary and/or Commissioner will make the final selection of the applicants to be funded. Priority for funding will be given to applicants who propose to carry out projects and activities in communities that have significant poverty,juvenile delinquency and violent crime and who can demonstrate the greatest effort in generating local support for the program. In addition, the Assistant Secretary and/or Commissioner may

show preference for applications proposing projects in diverse geographic areas that would not otherwise be served. Special consideration will be given to qualified applicants that meet the primary grant requirements and serve areas that are preparing or implementing comprehensive community-based strategic plans for achieving both human and economic development in an integrated manner, especially those applicants that operate within formally designated Empowerment Zones or Enterprise Communities or that have participated in the Pulling America's Communities Together (PACT) planning process.

In awarding Community Schools Program grants, the Commissioner may elect to consider an applicant's past performance in providing services to children and youth and may elect not to fund any applicant having known management, fiscal or other problems which make it unlikely that they would be able to perform effectively. Regional Offices will be consulted regarding these applications.

Grant awards of FY 1995 funds will be made by September 30, 1995. Subject to the availability of resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the Federal government may elect to select recipients for FY 1996 new grant awards out of the pool of applications submitted under this program announcement.

Successful grantees will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing as soon as possible after final funding decisions are made.

## Part V: Application Content, Instructions, Assembly and Submission

### *A. Content, Instructions and Assembly of Application.*

Each application must contain the following items in the order listed. Applicants should number all pages to make review and evaluation easier.

1. *Application for Federal Assistance.* (Standard Form 424, REV 4–88). To fill out this Form, follow the instructions in Part VI, Appendix C. In Item 8 of Form 424, check ''New.'' In Item 10 of the 424, clearly identify the Catalog of Federal Domestic Assistance Program Number and Title of the program for which funds are being requested (Priority Area A: Community Schools Program (93.588); Priority Area B: FACES Program (84.285A); or Priority Area C: Joint Community Schools/ FACES Program (93.588 and 84.285A)).

2. *Budget Information.* (Standard Form 424A, REV 4-88). Provide amounts for major budget categories.

For a budget submitted in response to Priority Area C: Joint Community Schools/FACES Program, Columns 1–4 of Section B of the Standard Form 424 should include the following information: Column 1: FACES Federal Costs; Column 2: FACES Non-Federal Share; Column 3: Community Schools Federal Costs; and Column 4: Community Schools Non-Federal Share.

3. *Budget Justification.* List on standard size plain white paper the amounts and sources of all funds, both Federal and non-Federal, that will be used for this project. Explain how these funds will be used.

4. *Assurances.* (Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, Certification Regarding Lobbying and Certification Regarding Environmental Tobacco Smoke). Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. Note: For FACES and Joint Community Schools/ FACES Programs the Program Specific Assurances Form must also be signed and returned with the application. By signing the Standard Form 424, the applicant agrees to abide by requirements regarding drug-free workplace, debarment and environmental tobacco smoke.

5. *Project Summary Description.* Clearly mark this page with the applicant's name as shown in item 5 of the Standard Form 424 and the title of the project as shown in item 11 of the same Form. The summary, not to exceed one page, should accurately and concisely reflect the proposal and include a description of the objectives of the project, approaches to be used and outcomes expected.

6. *Program Narrative Statement.* Applicants should use the Evaluation Criteria in Part III as a way to organize the Program Narrative and should address all the specifics contained in the criteria. The pages of the narrative section must be numbered and are limited to 45 typed pages, double spaced, printed only on one side, with at least 1/2 inch margins. Applications which contain a Program Narrative Statement longer than 45 double-spaced pages will not be reviewed or considered for funding. In addition, please note that previous attempts by applicants to exceed page limits or to circumvent space limitations by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application. It is in the best interest of applicants to ensure that the narrative statement is easy to read, logically developed in accordance with evaluation criteria and adheres to page limitations.

7. *Organizational Capability Statement.* Applicants must provide information (no more than three pages, double-spaced) on the applicant agency's experience and ability to bring together a broad consortium of organizations; and on planning and management capabilities. Applicants should provide and explain an organizational chart and show the relationship of this project to the current organization.

Applicants must provide assurances that a separate accounting system will be established to manage funds awarded under this program and that competitive procedures will be used for all project-related contracts and purchases.

8. *Supporting Documentation.* These documents might include resumes, newsclippings, and evidence of efforts to coordinate services at the local level. The maximum for supporting documentation is 15 pages, exclusive of letters of agreement. Documentation over the 15 page limit will not be reviewed. The applicant may, however, include as many letters of agreement as are appropriate to support the commitment of consortium members.

### *B. Application Submission*

To be considered for a grant, each applicant must submit a signed original and two additional copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have an original signature, signed in black ink. Each copy must be stapled (back and front) in the upper left corner. All copies of the application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or other items that cannot be processed easily on a photocopy machine with an automatic feed.

Closing Date for the Receipt of Applications: The closing date for receipt of applications for the grant programs in this announcement is May 5, 1995.

Applications may be submitted to the following address: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447. Hand delivered applications will be accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday at the Administration for Children and Families, Division of Discretionary Grants, 6th floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20447.

Envelopes containing applications must clearly indicate the Program Announcement Number ACF-93588.951 and the priority area that the application is addressing: Priority Area A: Community Schools Program; Priority Are B: FACES Program; or Priority Area C: Joint Community Schools/FACES Program.

Deadline: Applications will be considered as meeting the deadline if they are received on or before the receipt date at the above address. *Please note that this is a departure from the traditional approach of using post marks instead of receipt date to determine eligibility of application for review.*

Late Applications: Applications which do not meet the criteria stated above and are not received by the receipt date are considered late applications. These applications will not be reviewed or considered for funding.

Extension of Deadline. The granting agency may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Number 84.285A for the FACES Program and Number 93.588 for the Community School Program.)

Dated: February 27, 1995.

**Thomas Payzant,**

*Assistant Secretary, Office of Elementary and Secondary Education.*

Dated February 27, 1995.

**Olivia A. Golden,**

*Commissioner, Administration on Children, Youth and Families.*

**Appendix A**

*Executive Order 12372—State Single Points of Contact*

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW, Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jefferey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, Fax (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North

Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Board Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Association Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to:

Linda Clarke,
Telephone (809) 774–0750

**Appendix B**

PART VI: APPENDIX B.—TABLE OF COMMUNITY SCHOOL FUNDING ALLOCATIONS BY STATE

| Regions and states | State allocations |
|---|---|
| **Region I** | |
| Connecticut | $250,000 |
| Maine | 250,000 |
| Massachusetts | 301,486 |
| New Hampshire | 250,000 |
| Rhode Island | 250,000 |
| Vermont | 250,000 |
| **Region II** | |
| New Jersey | 314,575 |
| New York | 1,329,456 |
| Puerto Rico | 1,044,840 |
| Virgin Islands | 250,000 |
| **Region III** | |
| Delaware | 250,000 |
| District of Columbia | 250,000 |
| Maryland | 250,000 |
| Pennsylvania | 580,467 |
| Virginia | 297,723 |
| West Virginia | 250,000 |

PART VI: APPENDIX B.—TABLE OF COMMUNITY SCHOOL FUNDING ALLOCATIONS BY STATE—Continued

| Regions and states | State allocations |
|---|---|
| **Region IV** | |
| Alabama | 352,025 |
| Florida | 887,552 |
| Georgia | 586,084 |
| Kentucky | 295,851 |
| Mississippi | 370,850 |
| North Carolina | 526,165 |
| South Carolina | 385,729 |
| Tennessee | 286,488 |
| **Region V** | |
| Illinois | 898,787 |
| Indiana | 265,891 |
| Michigan | 584,211 |
| Minnesota | 250,000 |
| Ohio | 762,096 |
| Wisconsin | 277,126 |
| **Region VI** | |
| Arkansas | 250,000 |
| Louisiana | 563,614 |
| New Mexico | 250,000 |
| Oklahoma | 250,000 |
| Texas | 1,492,361 |
| **Region VII** | |
| Iowa | 250,000 |
| Kansas | 250,000 |
| Missouri | 338,918 |
| Nebraska | 250,000 |
| **Region VIII** | |
| Colorado | 250,000 |
| Montana | 250,000 |
| North Dakota | 250,000 |
| South Dakota | 250,000 |
| Utah | 250,000 |
| Wyoming | 250,000 |
| **Region IX** | |
| American Samoa | 250,000 |
| Arizona | 273,381 |
| California | 2,357,443 |
| Guam | 250,000 |
| Hawaii | 250,000 |
| Northern Marianas | 250,000 |
| Nevada | 250,000 |
| **Region X** | |
| Alaska | 250,000 |
| Idaho | 250,000 |
| Oregon | 250,000 |
| Washington | 250,000 |
| Native American Pgms | 750,000 |

**Appendix C—Forms and Instructions**

BILLING CODE 4184–01–P

**Appendix C—Forms and Instructions**

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):** ☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*: _____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐ ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

**13. PROPOSED PROJECT:**

| Start Date | Ending Date |
|---|---|
| | |

**14. CONGRESSIONAL DISTRICTS OF:**

| a. Applicant | b. Project |
|---|---|
| | |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a Federal | $ .00 |
| b Applicant | $ .00 |
| c State | $ .00 |
| d Local | $ .00 |
| e Other | $ .00 |
| f Program Income | $ .00 |
| g TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a Typed Name of Authorized Representative | b Title | c Telephone number |
| d Signature of Authorized Representative | | e Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4184–01–C

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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BILLING CODE 4184-01-C

**Instructions for the SF–424A**

*General Instructions*

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

*Section A. Budget Summary*

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6 a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal-Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Nonconstruction Programs**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

_____

Title

_____

Applicant organization

_____

Date submitted

BILLING CODE 4184–01–M

## U.S. Department of Health and Human Services

## Certification Regarding Drug-Free Workplace Requirements

## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check* ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

BILLING CODE 4184–01–C

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction. '' Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions**

(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. ''without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

**BUILDING CODE 4184–01–M**

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Entity** *(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

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Standard Form - LLL

BUILDING CODE 4184–01–C

[For the Family and Community Endeavor Schools Grant Program (FACES) under the Violent Crime Control and Law Enforcement Act]

**Assurances**

The applicant hereby makes the following program-specific assurances covering the Family and Community Endeavor Schools (FACES) Grant Program:

- The applicant will use grant funds received under this program to implement the program requirements;
- The applicant will comply with any evaluation requested as part of the FACES program, any research effort authorized under Federal law, and any investigation by the Secretary;
- The applicant shall prepare and submit to the Secretary an annual report regarding any program conducted with these funds;
- Funds made available under the FACES program shall be used to supplement, not supplant, other federal funds that would otherwise be available for activities funded under this program;
- The applicant will maintain separate accounting records for the program.

The applicant further agrees to:

- Cooperate with any data collection, research or evaluation efforts independently funded be sponsored by HHS and/or ED.

_____

Name of Applicant

_____

Program

_____

Signature

_____

Date

[FR Doc. 95–5331 Filed 3–3–95; 8:45 am]

BILLING CODE 4184–01–P

federal register

Monday
March 6, 1995

## Part VII

# Department of Education

**Family and Community Endeavor Schools Grant Program; Notice**

## DEPARTMENT OF EDUCATION

**RIN 1810–ZA01**

## Family and Community Endeavor Schools Grant Program

**AGENCY:** Department of Education.

**ACTION:** Notice of final definition, maximum award amount, and application evaluation criteria for fiscal year 1995.

**SUMMARY:** The Secretary announces the final definition, maximum award amount, and application evaluation criteria for the Family and Community Endeavor Schools Grant Program for fiscal year 1995. The Secretary takes this action to comply with the statute, the Violent Crime Control and Law Enforcement Act of 1994, and to ensure appropriate criteria by which to evaluate applications under this Act.

**EFFECTIVE DATE:** The definition, maximum grant award, and application evaluation criteria take effect on April 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Dalton Gillespie, U.S. Department of Education, 600 Independence Avenue SW., Portals Building, Room 603, Washington, DC 20202–6123. Telephone (202) 260–3954. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

**SUPPLEMENTARY INFORMATION:** The purpose of the Family and Community Endeavor Schools Grant Program is to prevent crime and violent behavior by providing programs designed to improve the academic and social development of at-risk children and youth in eligible communities during and after school hours, evenings, on weekends, and during holidays and the summer months. This notice contains the definition of an eligible community, the maximum grant award, and final evaluation criteria by which applications for funds will be evaluated in fiscal year 1995.

Congress authorized the Family and Community Endeavor Schools Grant Program under Title III, Subtitle D of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994. This legislation mandates the implementation of two similar programs under Subtitle D: The Community Schools Youth Services and Supervision Grant Program (Community Schools) through the Department of Health and Human Services and the Family and Community Endeavor Schools Grant Program (FACES) through the Department of Education. As the needs of children, youth, and communities can best be served by integrating the two programs, the Departments of Health and Human Services and Education have jointly developed an announcement of the availability of funds under these two programs.

**Note:** The definition, maximum grant award, and evaluation criteria outlined in this notice apply only to the FACES program operated through the Department of Education. A notice inviting applications for Community Schools, FACES, or a joint Community Schools/FACES program—all three programs—is published in the Department of Health and Human Services section of this issue of the **Federal Register**.

Authority for the FACES program is contained in 42 U.S.C. 13792 and 13793.

### Definition

*Eligible Community* means—

(1) An identifiable community or neighborhood with boundaries generally recognized by the residents in the community;

(2) A community that is small enough to allow a concentration of resources and the potential for a measurable impact; and

(3) A community that can demonstrate that it has a significant level of poverty, violent crime, and juvenile delinquency.

(Authority: 42 U.S.C. 13792, 13793)

### Maximum Grant Award

The maximum award for a FACES grant is $500,000. (The Violent Crime Control and Law Enforcement Act of 1994 sets a minimum FACES grant award of $250,000.)

### Application Evaluation Criteria

The Secretary uses the following criteria to evaluate applications under this program:

(a) *Objectives and need for assistance* (15 points). The Secretary reviews each application to determine the extent to which the project clearly specifies goals and service objectives; identifies a geographic area to be served; and demonstrates that the area has a significant level of poverty, violent crime, and juvenile delinquency. Applicants must—

(1) Demonstrate a need for assistance and identify existing gaps in services, infrastructure, and opportunities that, if filled, will support the academic and social development of children and youth in the community and reduce crime and violence;

(2) Identify measurable goals and objectives of the proposed project; and

(3) Identify the geographic area to be served, describe the factors that make the area an identifiable community or neighborhood, and demonstrate that the community is small enough to allow a concentration of resources that will result in an appreciable difference for children, youth, and the community.

(b)*Approach (30 points).* The Secretary reviews each application to determine the overall quality and appropriateness of its comprehensive plan to improve the academic and social development of at-risk children. The applicant must—

(1) Describe the underlying child and youth development principles that will be employed as a framework for the program and discuss why this framework was chosen and how it will lead to the reduction of crime and violence;

(2) Identify the age groups to be served, explain the reasons for that choice, and indicate the period of time over which children and youth will receive services;

(3) Describe in detail how the applicant will achieve each of the goals and objectives identified in the application and identify any unusual features of the program;

(4) Describe the continuum of services and activities that will be provided and indicate how these services will meet the academic, social, and developmental needs of the participants and reduce crime and violence;

(5) Identify the physical location of the program and demonstrate that the location and services are safe, secure, and accessible to children, youth, and families in terms of days and hours of operation and sensitivity to the population served;

(6) Provide information that demonstrates the extent to which the applicant has attempted to generate local support for the program from community leaders, a school district, local officials, and other organizations that the applicant determines to be appropriate;

(7) Indicate the extent to which a community planning process has occurred and the extent of the planning effort that remains to be accomplished; include information on the process and timing for the phase-in of services and other program components; and information on how the following groups have been or will be included in the planning and implementation of the program—

(i) Children, youth, and family members;

(ii) Local school officials and teachers;

(iii) Business and civic leaders;

(iv) Religious organizations;

(v) Museums, cultural and arts organizations;

(vi) Juvenile justice, law enforcement and community policing representatives;

(vii) Community residents, neighborhood associations and public housing groups;

(viii) Public and private non-profit organizations that provide education, child protective services, or other human services;

(ix) Other appropriate entities such as social service, health and mental health agencies; and a description of barriers to participation and how these barriers will be overcome; and

(8) Identify the applicant's plan for a collaborative structure that trains and coordinates the efforts of administrators, social workers, guidance counselors, parents, teachers, and school volunteers.

(c) *Results or benefits expected* (15 points). The Secretary reviews each application to determine the results and benefits to be derived from the project. The applicant must—

(1) Describe the long- and short-term outcomes of the program and indicate, in measurable terms, appropriate indicators for assessment of program implementation and impact; and

(2) Estimate the number of children and youth that will be served.

(d) *Program evaluation* (15 points). The Secretary considers the quality and thoroughness of the applicant's plan to evaluate the program, including an assessment of the academic and social achievement of children assisted by the program. The applicant must—

(1) Provide assurances that it will cooperate with any data collection, research or evaluation efforts independently funded or sponsored by HHS and/or ED;

(2) Provide an evaluation plan for the project that is thorough, feasible, and appropriate; that includes collection of baseline data and identifies and tracks indicators that will show progress in program implementation and attainment of outcomes, including program planning, collaboration and coordination, and intensity, duration and location of services provided; and that assesses the social and academic achievement of children and youth served; and

(3) Provide information on how the program plans to periodically collect and maintain data that can be used to report annually to Congress on the number of children participating in the program; the academic and social achievement of such children; the school attendance and graduation rates of such children; and the number of such children being processed by the juvenile justice system.

(e) *Staff background and organizational experience* (20 points). The Secretary reviews each application to determine the skills, experience, and educational background of key personnel the applicant plans to use on the project. The applicant must—

(1) Identify the skills, experience, and educational requirements of key staff and indicate how they are relevant to the objectives of the project; provide résumés of individuals already chosen for positions and identify recruitment strategies that will be used to identify potential staff and volunteers, especially those that will be used to hire staff that reflect or come from the community; and

(2) Demonstrate the staff's ability to effectively manage the project, including the ability to lead community prevention efforts, coordinate activities with schools and other agencies and participate in or develop evaluation activities.

(f) *Budget appropriateness* (10 points). The Secretary reviews each application to determine that the project's costs are reasonable in view of the anticipated results and benefits. The applicant must—

(1) Identify the costs of the proposed project in terms of children, youth, and neighborhoods to be served; include funds in the budget, as appropriate, for training and technical assistance, evaluation, and the cost of up to 3 annual trips to Washington, DC for two people to participate in meetings and conferences;

(2) Describe the fiscal controls and accounting procedures that will ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under this program, including assurance that competitive procedures will be used when purchasing contracting or otherwise providing goods, activities, and services; and

(3) Provide evidence that the applicant can and intends to generate the local financial and in-kind support, service, and commitments required for non-Federal match over the life of the project, including a description of charitable, private and non-profit resources that will be obtained to support the program. (Approved under Office of Management and Budget control number 1810–A158.)

## Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in fiscal year (FY) 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final notice of eligible community definition, maximum grant award, and selection criteria, which will apply only to the FY 1995 grant competition.

## Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Authority: 42 U.S.C. 13792, 13793)

(Catalog of Federal Domestic Assistance Program Number 84.285, Family and Community Endeavor Schools Grant Program)

Dated: February 27, 1995.

**Thomas W. Payzant,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 95–5332 Filed 3–3–95; 8:45 am]

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federal register

Monday
March 6, 1995

# Part VIII

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 33**

**Airworthiness Standards: Windmilling and Rotor Locking Tests, and Vibration and Vibration Tests; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 33**

**[Docket No. 28107; Notice No. 95–3]**

**RIN 2120–AF57**

## Airworthiness Standards; Windmilling and Rotor Locking Tests, and Vibration and Vibration Tests

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to change the windmilling and vibration airworthiness standards for the issuance of original and amended type certificates for aircraft engines. This proposal resulted from an effort to harmonize the Federal Aviation Regulations with European requirements being drafted by the Joint Aviation Authorities (JAA). The proposed changes, if adopted, would create one set of common requirements, that would reduce the regulatory burden on the aviation industry worldwide by eliminating the need for applicants for type certificates to comply with different sets of standards when seeking certifications from the FAA and JAA.

**DATES:** Comments must be submitted on or before June 5, 1995.

**ADDRESSES:** Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28107, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28107. Comments may be inspected in Room 915G weekdays between 9:00 a.m. and 5:00 p.m., except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Golinski or Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 238–7119; fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to submit written data, views, or arguments on this proposed rule. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. all comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28107.'' The postcard will be date stamped and mailed to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

Part 33 of title 14 of the Code of Federal Regulations (14 CFR part 33, hereafter ''part 33'') prescribes airworthiness standards for the issuance of original and amended type certificates for aircraft engines. Part E of the Joint Aviation Requirements (JAR–E) prescribes corresponding airworthiness standards of the European Joint Aviation Authorities (JAA). While part 33 and JAR–E are similar, they differ in several respects. Non-uniform standards impose a regulatory burden on applicants seeking certification under both sets of standards in the form of additional costs and delays in the time required for certification.

As part of its commitment to promote harmonization of part 33 and JAR–E, the FAA, with the cooperation of the JAA, established the part 33/JAR–E Authorities Engine Group to compare part 33 and JAR–E. This group included regulatory representatives from France, Canada, Germany, the United Kingdom, and the United States. The basis for the comparison was part 33, as amended through Amendment 11, and JAR–E, as amended through Change 7. As its initial effort, the study group focused on gas turbine engines and concentrated on JAR–E items that appeared to be more stringent than part 33. The identified differences were categorized into lists 1 and 2. List 1 included twenty items where the differences appear to be sufficiently significant to cause the JAA to apply additional conditions to U.S. manufacturers seeking JAA certification. List 2 included requirements considered to be equivalent to the corresponding Federal Aviation Regulation (FAR) in part 33 based on FAA policy and practice.

In August 1989, at the request of the Aerospace Industries Association (AIA) and the Association Europeene Des Constructeurs De Materiel Aerospatial (AECMA), the FAA and JAA met in Paris, France, with aerospace industry representatives to initiate a process for resolving List 1 comparison issues. At an FAA/JAA management meeting in June 1992, in Toronto, Canada, seven part 33 engine ''Harmonization's Terms of Reference'' were introduced. Two of these initiatives, windmilling and rotor locking test requirements, and vibration and vibration test requirements, were contained in the FAA/JAA List 1 of twenty items. They were the first engine harmonization initiatives for which consensus was reached by study groups from domestic and international industry and airworthiness authorities. In December 1992, the FAA requested the Aviation Rulemaking Advisory Committee (ARAC) to further evaluate the proposals (57 FR 58840). This task, in turn, was assigned to the Propulsion Harmonization Working Group of ARAC. On June 18, 1993, the working group reported to the ARAC, which recommended to the FAA that the FAA proceed with rulemaking. This NPRM and a corresponding notice of proposed amendment (NPA) to JAR–E reflect the ARAC recommendations.

### General Discussion of the Proposals

The proposals in the NPRM would harmonize U.S. regulations with existing and proposed requirements of the European Joint Aviation Authorities, codify current industry practices, and clarify existing requirements. Specifically, whey would (1) Clarify the existing requirement that excessive vibratory stresses may not be induced

throughout the declared flight envelope of the engine; (2) require that continued windmilling following engine shutdown must not create a hazard for the airplane; (3) expand the scope of vibration tests; (4) expand the applicability of rotor locking tests; and (5) clarify rotor locking and vibration test requirements.

*Windmilling and Rotor Locking Test Requirements*

Section 33.74 Windmilling

Parts 23 and 25 of title 14 of the CFR prescribe the airworthiness standards for airplanes. Sections 23.903(e)(2) and 25.903(c) in part, state that for turbine engine installations, the means for stopping the rotation of any engine need be provided only where continued rotation could jeopardize the safety of the airplane. JAR–E presently provides a safety objective for windmilling without oil.

This proposal would add a new section to state specific windmilling requirements that are consistent with the safety objectives of the airplane requirements in §§ 23.903(e)(2) and 25.903(c), which address control of engine rotation. The proposed new requirements would ensure that windmilling following engine shutdown in flight would not create a hazard for the airplane.

This proposal was developed and agreed to by the ARAC Propulsion Harmonization working group. The proposed change contains language that would be common to the language proposed for JAR–E, thereby establishing equivalency and creating consistency between the two regulations. In addition, because an engine manufacturer must show compliance to the proposed § 33.74 which has safety objectives consistent with the corresponding airplane requirements for windmilling engines identified in §§ 23.903(e)(2) and 25.903(c), the engine manufacturer can provide this information directly to the airplane manufacturers to reduce the amount of analysis performed by the airplane manufacturers under §§ 23.903(e)(2) and 25.903(c), which could result in potential cost savings for the airplane manufacturers.

Section 33.92 Rotor Locking Tests

Section 33.92 currently specifies engine test requirements for engines installed on supersonic aircraft and also specifies an endurance test for turbine engine rotor stopping and locking devices. This proposal would delete the test requirements in § 33.92(a) and clarify the endurance test for rotor stopping and locking devices, that is applicable to all turbine engines that incorporate such a device. This proposed requirement will also be proposed in JAR–E, thereby harmonizing with part 33 and facilitating the harmonization of part 25 with JAR 25, by allowing deletion of JAR 25.903(c)(1), which addresses continued windmilling after loss of engine oil.

The proposed deletion of current § 33.92(a) is based on the service experience of the world's only supersonic commercial transport. The British/French Concorde has experienced a number of inflight engine shutdowns at supersonic speeds since 1974. In each of these incidents, because of the aerodynamic effect of drag and loss of thrust, speed was rapidly reduced to subsonic levels. Therefore, requirements for conducting prolonged engine windmilling tests at supersonic speeds are unnecessary.

The proposal would move the requirement that each engine incorporating a rotor locking device be shut down while operating at rated maximum continuous thrust from § 33.92(b)(1) to proposed § 33.92. Proposed revision § 33.92 would also require that the means for stopping and locking the rotor(s) must be operated as specified in the engine operating instructions.

The proposed revision to § 33.92 would clarify the endurance test requirements currently identified in § 33.92(b) by establishing that following rotor locking, the rotor(s) must be held stationary for five minutes while being subjected to the maximum torque that could result from continued flight in this condition. The harmonization review has established that the current requirement does not provide adequate information on how to run the test. Clarification is provided by the addition of a five minute test to confirm the durability of the system.

*Vibration and Vibration Test Requirements*

Section 33.63 Vibration

Section 33.63 currently contains vibration design and construction standards for aircraft engines. This proposal would clarify the existing text by adding the term ''declared flight envelope'' to ensure that excessive vibration stresses are not induced at all intended airborne and non-airborne conditions of operation. This proposal would harmonize the vibration requirements.

Section 33.83 Vibration Test

Section 33.83 prescribes the testing requirements that turbine engines must undergo to establish the aerodynamically induced system vibration (flutter) as well as the mechanically induced vibration characteristics of components that could induce failure. This proposal would delete the existing text and replace it with harmonized requirements. The harmonized requirements address some conditions that are currently being addressed by analysis in § 33.75.

Section 33.83(a). This proposal would replace the current text with new harmonized text to clarify the existing requirement that all components in each engine that may be subject to mechanically or aerodynamically induced vibratory excitations must undergo vibration surveys. These engine surveys shall be based upon an appropriate combination of experience, analysis, and component test and should address, as a minimum, blades, vanes, rotor discs, spacers, and rotor shafts. Substantive pre-certification activity (tests and analyses) is necessary for determining which engine components require verification by the engine certification process. The proposal retains the current practice of the FAA and JAA of limiting formal certification test requirements to only the final engine or major assembly rig vibration test.

The proposal would replace the phrase ''at the maximum inlet distortion limit'' with ''throughout the declared flight envelope'' to clarify that the engine must be tested to cover all intended airborne and non-airborne conditions of operation. Using the term ''declared flight envelope'' better describes the airworthiness objective of this section. This change results in no foreseen additional burden on applicants because industry practice has been to conduct vibration surveys throughout the declared flight envelope. This proposal would also move the requirement specifying the range of rotor speeds and power or thrust of the vibration surveys from current § 33.83(a) to proposed revised § 33.83(b).

Section 33.83(b). This proposal would revise this paragraph to reorganize and elaborate on existing requirements, introduce terminology relevant to flutter vibration, and achieve harmonization where differences currently exist between Part 33 and JAR–E. The proposed paragraph (b) would require the vibration tests to cover the ranges of physical rotor speeds, corrected rotor speeds, and engine power or thrust corresponding to operations throughout

the declared flight envelope from idling speed up to 103 percent of the maximum rotor speed permitted for rating periods of 2 minutes or longer, and up to 100 percent of all other rotor speeds. The proposal would also add to the revised paragraph (b) a requirement that if there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended. If it becomes physically impossible to achieve these extended rotor speeds, it would have to be shown by analysis or other means that no harmful vibration exists. Engine manufacturing and build tolerances can result in peak stresses occurring at slightly different rotor speeds between engines and engine parts (i.e., blades) of the same type design. The speed extension, therefore, is intended to cover inherent engine-to-engine and blade-to-blade variations in vibratory response.

Section 33.83(c). The proposal would revise the current paragraph (c) and reword the existing text to harmonize and clarify the existing requirement. Current paragraph (c) requires that during the vibration test, each accessory drive and mounting attachment must be loaded with the load imposed by each accessory used only for aircraft service up to the limit load specified by the applicant for the engine drive or attachment point. The proposal would require that evaluations be made of the effects on vibration characteristics of operating with scheduled changes (including tolerances) to variable vane angles, compressor bleeds, accessory loading, the most adverse inlet air flow distortion pattern declared by the manufacturer, and the most adverse conditions in the exhaust duct(s).

Section 33.83(d) This proposal would add a new paragraph (d) that would require that the effects on vibration characteristics of likely fault conditions shall be evaluated by test, or analysis, or by reference to previous experience and be shown not to create a hazardous condition. Since U.S. engine manufacturers presently address and evaluate the effects of vibration characteristics through analysis in accordance with the requirements of § 33.75, this proposal would harmonize part 33 with JAR–E.

Section 33.83(e). This proposal would add a new paragraph (e). The current § 33.83(b) requires that vibration stresses of rotor and stator components be less, by a margin acceptable to the Administrator, than the endurance limit of the material from which these parts are made, adjusted for the most severe operating conditions. This proposal would slightly modify the text of the requirement by incorporating the standard industry practice of making due allowance for variations in material properties. Current industry practice is based on the FAA interpretation of the current requirement. The vibration stresses associated with the vibration characteristics determined under § 33.83 must be less than the endurance limits of the materials concerned, after making certain allowances. The suitability of these stress margins would have to be justified for each part and if it is determined that certain operating conditions, or ranges, need to be limited, operating and installation limitations would be established. The proposed new paragraph (e) would harmonize with existing JAR–E–650 provisions and conform with current component vibration testing practices.

Section 33.83(f). Proposed new paragraph (f) would require that compliance with § 33.83 be substantiated for each specific installation configuration that can affect the vibration characteristics of the engine. The proposed language would provide that if these vibrations cannot be fully investigated during engine certification, then the methods by which they can be evaluated and compliance shown shall be substantiated and defined in the installation documents required by § 33.5. The proposed amendment would codify current industry practice.

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), an evaluation of the paperwork burden of this proposal is not required since there are no recordkeeping or reporting requirements associated with this proposed rule.

## Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analysis. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule (1) Would generate benefits outweighing its costs; (2) is not a ''significant regulatory action'' as defined in the Executive Order; (3) is not ''significant'' as defined in DOT's policies and procedures; (4) would not have a significant impact on a substantial number of small entities; and (5) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

### *Regulatory Evaluation Summary*

Of the several proposals, only one might result in additional cost. The FAA has identified the requirements in proposed § 33.83(b) as the only one that could require minor additional engine testing and engineering analysis, resulting in negligible compliance costs. The reference to experience, analysis, and component tests in proposed § 33.83(a) should not impose additional costs since it incorporates current industry practice. The revised engine windmilling requirements of proposed new § 33.74 and the proposed amendments to § 33.92(a) could potentially result in cost savings to engine and transport airplane manufacturers. The FAA solicits comments from interested persons on the costs of the proposed rule.

The primary benefits of the proposed rule would be harmonization of airworthiness standards with the European Joint Aviation Requirements and clarification of existing standards. The resulting increased uniformity of standards would simplify airworthiness approval for import and export purposes and would avoid some of the costs that can result when manufacturers seek type certification under both sets of standards. While not readily quantifiable, the cost economies of harmonization would far exceed the minor incremental costs of the proposed rule.

### *Regulatory Flexibility Determinations*

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on thresholds in implementing FAA Order 2100. 14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

*International Trade Impact Assessment*

The proposed rule would not constitute a barrier to international trade, including the export of U.S. aircraft engines to foreign countries and the import of foreign aircraft engines into the United States. Instead, the proposed standards would harmonize with existing and proposed standards of foreign authorities, thereby lessening restraints on trade.

**Federalism Implications**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed above, including the findings in the Regulatory Evaluation and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects in 14 CFR Part 33**

Aircraft, Aviation safety.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 33 as follows:

## PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority citation for part 33 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g).

2. Section 33.63 is revised to read as follows:

**§ 33.63 Vibration.**

Each engine must be designed and constructed to function throughout its declared flight envelope and operating range of rotational speeds and power/thrust, without inducing excessive stress in any engine part because of vibration and without imparting excessive vibration forces to the aircraft structure.

3. A new section 33.74 is added to read as follows:

**§ 33.74 Windmilling.**

If the engine continues to windmill after it is shut down for any reason while in flight, continued windmilling of that engine must not result in damage that could create a hazard to aircraft representing a typical installation during the maximum period of flight likely to occur with that engine inoperative.

4. Section 33.83 is revised to read as follows:

**§ 33.83 Vibration test.**

(a) Each engine must undergo vibration surveys to establish that the vibration characteristics of those components that may be subject to mechanically or aerodynamically induced vibratory excitations are acceptable throughout the declared flight envelope. The engine surveys shall be based upon an appropriate combination of experience, analysis, and component test and shall address, as a minimum, blades, vanes, rotor discs, spacers, and rotor shafts.

(b) The surveys shall cover the ranges of power or thrust, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minimum rotor speed up to 103 percent of the maximum rotor speed permitted for rating periods of two minutes or longer, and up to 100 percent of all other permitted rotor speeds, including those that are overspeeds. If there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended in order to quantify the phenomenon and to ensure compliance with the requirements of § 33.63.

(c) Evaluations shall be made of the effects on vibration characteristics of operating with scheduled changes (including tolerances) to variable vane angles, compressor bleeds, accessory loading, the most adverse inlet air flow distortion pattern declared by the manufacturer, and the most adverse conditions in the exhaust duct(s).

(d) The effects of likely fault conditions (such as, but not limited to, out-of balance, local blockage or enlargement of stator vane passages, fuel nozzle blockage, incorrectly scheduled compressor variables, etc.) on vibration characteristics, shall be evaluated by test or analysis, or by reference to previous experience and shall be shown not to create a hazardous condition.

(e) The vibration stresses associated with the vibration characteristics determined under this section must be less than the endurance limits of the materials concerned, after making due allowance for operating conditions and permitted variations in properties of the materials. The suitability of these stress margins must be justified for each part evaluated. If it is determined that certain operating conditions, or ranges, need to be limited, operating and installation limitations shall be established.

(f) Compliance with this section shall be substantiated for each specific installation configuration that can affect the vibration characteristics of the engine. If these vibration effects cannot be fully investigated during engine certification, the methods by which they can be evaluated and methods by which compliance can be shown shall be substantiated and defined in the installation documents required by § 33.5.

5. Section 33.92 is revised to read as follows:

**§ 33.92 Rotor locking tests.**

If windmilling is prevented by a means to lock the rotor(s), the engine must be subjected to a test that includes 25 operations of this means under the following conditions:

(a) The engine must be shut down from rated maximum continuous thrust or power, and

(b) The means for stopping and locking the rotor(s) must be operated as specified in the engine operating instructions while being subjected to the maximum torque that could result from continued flight in this condition; and

(c) Following rotor locking, the rotor(s) must be held stationary under these conditions for five minutes for each of the 25 operations.

Issued in Washington, DC, on February 22, 1995.

**Daniel P. Salvano,**

*Acting Director of Aircraft Certification Service.*

[FR Doc. 95–5419 Filed 3–3–95; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
March 6, 1995

# Part IX

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

**48 CFR Part 2, et al.**

**Federal Acquisition Regulation; Simplified Acquisition Procedures, Federal Acquisition Computer Network Requirements (FACNET) and Electronic Contracting; Proposed Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53**

**[FAR Case 94–770]**

**RIN 9000–AG18**

## Federal Acquisition Regulation; Simplified Acquisition Procedures/ FACNET

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is issued pursuant to the new simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

**DATES:** *Comments:* Comments should be submitted on or before May 5, 1995 to be considered in the formulation of a final rule.

*Public Meeting:* A public meeting will be held on April 3, 1995, at 9:30 a.m. in the GSA Auditorium on the first floor of the GSA Building.

*Oral and Written Statements:* Persons wishing to make oral or written statements at the public meeting should submit to the FAR Secretariat a copy of the presentation by March 29, 1995.

**ADDRESSES:** Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–770 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Diana Maykowskyj, Team Leader, Simplified Acquisition Procedures/ FACNET Team, on (703) 274–6307 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–755. Please cite FAR Case 94–770, Simplified Acquisition Procedures.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include the areas of commercial item acquisition, simplified acquisition procedures, the Truth in Negotiation Act and FACNET.

The terms ''simplified acquisition'' and ''Federal Acquisition Computer Network (FACNET)'' are defined by the Federal Acquisition Streamlining Act of 1994 (the Act). The Act defines the simplified acquisition threshold as $100,000. It limits use of simplified acquisition procedures by procurement activities not having certified Interim FACNET to procurements not exceeding $50,000. Use of simplified acquisition procedures is also limited to procurements not exceeding $50,000 if an agency does not have certified Full FACNET by January 1, 2000.

Review of the law and the proposed implementing rule requires that the difference between the simplified acquisition threshold and the use of simplified acquisition procedures be recognized. The simplified acquisition threshold is $100,000. The authority to use simplified acquisition procedures depends on implementation and proper certification of FACNET.

This rule proposes to incorporate FAR Subpart 4.5 for FACNET information and guidance. FAR Subpart 4.5 provides definitions, certification information, and exemptions in accordance with the Act. FAR case 91–104 (''Electronic Commerce'') and this implementation of the Act are interdependent and are meant to be considered jointly. Reviewers are advised that FACNET is not a single electronic system that will be used by all executive agencies. It is, however, a universal electronic capability that will permit potential contractors to, as a minimum, obtain information on proposed procurements, submit questions, and receive awards on a government-wide basis. Each agency will determine the system(s) that will be used by its procuring activities so that they can certify Interim FACNET for those activities and Full FACNET for the agency. The Act and the proposed rule also provide for exempting individual procurements and procuring activities from the use of FACNET. This becomes significant when agencies certify Full FACNET which is based, in part, on the percentage of non-exempt transactions which were made through FACNET during the previous fiscal year.

Implementation of FACNET (Electronic Commerce) will include a vendor registration requirement for any business entity wishing to do business with the Government electronically. Contractor's information will be submitted to the Centralized Contractor Registration System in accordance with the Federal implementation conventions.

There are technical requirements and other procedures with respect to FACNET that are not appropriate for coverage in the FAR but are needed by executive agencies to fully implement FACNET. This information will be disseminated via other appropriate means.

*Public Meeting.* A public meeting will be held on April 3, 1995 at 9:30 a.m. in the GSA Auditorium to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR. Persons or organizations wishing to make presentations will be allowed 10 minutes each to present their views, provided they notify the FAR Secretariat, at (202) 501–4755. Written statements for presentation should be submitted to the FAR Secretariat by March 29, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

This rule overlaps in some areas with the ''Electronic Commerce'' rule (FAR case 91–104) appearing elsewhere in this issue of the **Federal Register**. Presenters are welcome to submit prepared statements concerning the ''electronic commerce'' rule to the extent that the statement has some interrelation with this simplified acquisition/FACNET rule.

Interested members of the public may obtain a copy of the desired rule from the FAR Secretariat, see **ADDRESSES** caption.

### B. Regulatory Flexibility Act

The proposed rule may have a significant positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because it is designed to reduce the burden on entities desiring to do business with the Government and will apply to all large and small business

entities, and all educational and non-profit organizations who are interested in participating in Government acquisitions. The proposed rule establishes the simplified acquisition threshold and sets forth policies and guidance for the implementation of FACNET pursuant to the Act. The implementation of FACNET will provide for electronic exchange of acquisition information between the private sector and the Federal Government that will increase the opportunities for vendors currently doing business with the Government, particularly small businesses. As a result of the Act, procurements between $2,500 and $100,000 are exclusively reserved for small business. It is recognized that an initial start-up cost will be incurred for purchase of personal computer, modem, software, and telephone lines estimated to be $1,500. Additionally, it is anticipated that most small businesses will subscribe to third party value added network (VAN) service to facilitate their communications with the Government's computers. The cost of advance subscription ranges from approximately $30 to $100 per month, depending on the type of services obtained. The benefit of increased business opportunities should far outweigh these initial start-up costs.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Council for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 94–770), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the proposed rule contains information collection requirements that need the approval of the Office of Management and Budget (OMB) under 44. U.S.C. 3501 *et seq.* Contractors will be required to electronically register with the Federal Contractor Registration System operated by the Defense Information Megacenter. The information to be provided electronically is information currently reported under several existing forms, including SF–129, Solicitation Mailing List Application, the SF–3881, ACH vendor/Miscellaneous Payment Enrollment Form, and the DD–2051, request for Assignment of a Commercial and Government Entity information pertaining to their EDI capabilities. Establishment of a central registration system should eliminate the need to submit multiple registrations with each contracting office the contractor is doing business with.

A request for approval of a new information collection requirement concerning simplified acquisition procedures is being submitted to the OMB. Public comments concerning this request are invited through a **Federal Register** notice published elsewhere in this issue.

### List of Subjects in 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

Government procurement.

**Edward C. Loeb,**

*Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Chapter 1 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.201 is revised to read as follows:

#### 2.201 Contract clause.

The contracting officer shall insert the clause at 52.202–1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold in Part 13. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

## PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.103–1 is amended by revising paragraph (a) to read as follows:

#### 3.103–1 Solicitation provision.

* * * * *

(a) The acquisition is to be made under the simplified acquisition procedures in Part 13;

* * * * *

4. Section 3.104–10 is amended by revising paragraph (c) to read as follows:

#### 3.104–10 Solicitation provision and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the simplified acquisition threshold (see 13.000) and all contracts and modifications to contracts exceeding that threshold which do not already contain the clause when the modification is expected to exceed that threshold.

* * * * *

5. Section 3.404 is amended by revising paragraphs (b)(1) and (c) to read as follows:

#### 3.404 Solicitation provision and contract clause.

* * * * *

(b) * * *

(1) The contract amount is expected to be at or below the simplified acquisition threshold in Part 13;

* * * * *

(c) The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold.

6. Section 3.502–3 is revised to read as follows:

#### 3.502–3 Contract clause.

The contracting officer shall insert the clause at 52.203–7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13.

7. Section 3.503–2 is revised to read as follows:

#### 3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13.

## PART 4—ADMINISTRATIVE MATTERS

8. Part 4 is amended by adding Subpart 4.5, consisting of sections 4.500 through 4.507, to read as follows:

#### Subpart 4.5—Electronic Commerce in Contracting

Sec.

4.500 Scope of subpart.
4.501 Definitions.
4.502 Policy.
4.503 Contractor registration.
4.504 FACNET functions.
4.505 FACNET certification.

4.505–1 Interim certification.
4.505–2 Full certification.
4.505–3 Governmentwide certification.
4.505–4 Contract actions excluded.
4.506 Exemptions.
4.507 Contract actions using simplified acquisition procedures.

**4.500 Scope of subpart.**

This subpart provides policy and procedures for the establishment and use of FACNET as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

**4.501 Definitions.**

''ANSI X12'' means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). The American National Standards Institute is the coordinator and clearinghouse for national standards in the United States.

''Federal Acquisition Computer Network (FACNET)'' means the governmentwide Electronic Commerce/Electronic Data Interchange systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

''Full FACNET'' means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504 and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

''Governmentwide FACNET'' means that the Federal government has certified its FACNET capability and more than 75 percent of eligible contracts in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

''Interim FACNET'' means a contracting activity has been certified as having implemented a capability to provide widespread public notice of, and issue, solicitations and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

''Transaction Set'' means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

''Value-Added Network (VAN)'' means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

''Value-Added Service (VAS)'' means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business systems support for customers.

**4.502 Policy.**

(a) The Federal government shall acquire supplies and services via FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of acquiring supplies and services exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103(b)).

(c) Contracting officers are authorized to use FACNET for any contract action governed by the FAR, unless specifically exempted by agencies.

(d) Before using electronic data interchange, agencies shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

**4.503 Contractor registration.**

(a) In order for a contractor to conduct electronic commerce with the Federal government, the contractor must provide registration information to the Centralized Contractor Registration System.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

**4.504 FACNET functions.**

(a) FACNET shall allow agencies to do the following electronically—

(1) Provide widespread public notice of contracting opportunities, and issue solicitations;

(2) Receive responses to solicitations and associated requests for information;

(3) Provide public notice of awards of contracts and orders (including price);

(4) Receive questions regarding solicitations, if practicable;

(5) Issue contracts and orders, if practicable;

(6) Initiate payments to contractors, if practicable; and,

(7) Archive data relating to each procurement action.

(b) FACNET shall allow the private sector to do the following electronically:

(1) Access notices of solicitations;

(2) Access and review solicitations;

(3) Respond to solicitations;

(4) Receive contracts and orders, if practicable;

(5) Access information on awards of contracts and orders; and,

(6) Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable.

**4.505 FACNET certification.**

**4.505–1 Interim certification.**

A contracting activity is considered to have implemented interim FACNET if:

(a) The contracting activity has implemented the FACNET functions described in 4.504(a) (1) and (2), and (b) (1), (2), and (3); and issues notices of solicitations and receives responses to solicitations in a system having those functions.

(b) The contracting activity is using FACNET for contracts (not otherwise exempted, see 4.506), that exceed the micro-purchase threshold and do not exceed the simplified acquisition threshold;

(c) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense, has certified to the Administrator of OFPP that the contracting activity has implemented interim FACNET.

(d) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense, shall notify the private sector via the Commerce Business Daily that a contracting activity of the agency has certified interim FACNET. The notice shall establish a date after which it will be required that all responses to solicitations issued by the contracting activity through FACNET, must be submitted through FACNET, unless otherwise authorized.

**4.505–2 Full certification.**

An agency is considered to have implemented full FACNET if:

(a) The agency has implemented all of the FACNET functions described in 4.504; and

(b) During the preceding fiscal year, more than 75 percent of the agency's eligible contract actions, not otherwise exempted (see 4.506), that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold were made via FACNET; and

(c) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET.

(d) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET.

**4.505–3 Governmentwide certification.**

The Federal Government is considered to have implemented Governmentwide FACNET if:

(a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies that exceeded the micro-purchase threshold and did not exceed the simplified acquisition threshold were made via full FACNET; and

(b) The Administrator of OFPP has certified implementation of governmentwide FACNET to the Congress.

**4.505–4 Contract actions excluded.**

For purposes of calculating the percentage of FACNET use referred to in 4.505–2 and 4.505–3, actions issued against established contracts, such as delivery orders, task orders, and in scope modifications shall not be included.

**4.506 Exemptions.**

The following contracts are exempted from the use of FACNET, as specified below, and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) Interim FACNET.

(1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost effective to process via FACNET. Such determinations shall be centrally maintained at the contracting activity.

(2) Contracts that do not require notice under subpart 5.202.

(b) Full FACNET—Contracts made by a contracting activity (or a portion of a contracting activity), if the activity is exempted from use of FACNET by the head of the agency or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense. Any such exemption shall be based on a written determination that FACNET processing is not cost effective or practicable for the contracting activity, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive or the Under Secretary of Defense for Acquisitions and Technology for the Department of Defense.

**4.507 Contract actions using simplified acquisition procedures.**

Contracting officers shall refer to section 13.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

9. Section 4.800 is revised to read as follows:

**4.800 Scope of subpart.**

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to contracts made using the simplified acquisition procedures covered by Part 13 is optional. (See also documentation requirements in 13.106–2).

10. Section 4.804–1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

**4.804–1 Closeout by the office administering the contract.**

(a) * * *

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts other than those using simplified acquisition procedures should be closed within 6 months after the date in which the contracting officer receives evidence of physical completion.

* * * * *

11. Section 4.804–2 is amended by revising paragraph (a) to read as follows:

**4.804–2 Closeout of the contracting office files if another office administers the contract.**

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by regulation.

* * * * *

12. Section 4.805 is amended in the table in paragraph (b) by revising the entries in the ''Document'' column of paragraphs (b)(5), (10), (11), and (13) to read as follows:

**4.805 Storage, handling and disposal of contract files.**

* * * * *

(b) * * *

| Document | Retention period |
|---|---|
| * * * * * | |
| (5) Unsuccessful offers or quotations that pertain to contracts using simplified acquisition procedures ..... | ..... |
| * * * * * | |
| (10) Records or documents other than those in paragraphs 4.805(b)(1)–(9) of this section pertaining to contracts using simplified acquisition procedures ..... | ..... |
| * * * * * | |
| (11) Records or documents other than those in paragraphs 4.805(b)(1)–(10) of this section pertaining to contracts using simplified acquisition procedures ..... | ..... |
| * * * * * | |
| (13) Solicited and unsolicited unsuccessful offers and quotations above the appropriate simplified acquisition threshold in Part 13 .... | ..... |
| * * * * * | |

## PART 5—PUBLICIZING CONTRACT ACTIONS

13. Section 5.002 is amended by revising paragraph (c) to read as follows:

**5.002 Policy.**

* * * * *

(c) Assist small business concerns, small disadvantaged business concerns, and women owned small businesses in obtaining contracts and subcontracts.

14. Section 5.101 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(2) introductory text and (a)(2)(ii) to read as follows:

**5.101 Methods of disseminating information.**

* * * * *

(a) As required by the Small Business Act (U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), and unless the contract action is being made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET, contracting officers shall disseminate information on proposed contract actions as follows:

(1) For contract actions expected to exceed $25,000, by synopsizing in the

Commerce Business Daily (CBD) (see section 5.201); and

(2) For proposed contract actions expected to exceed $10,000 ($5,000 for Defense activities), but not expected to exceed $25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency. Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days or until after quotations have been opened, whichever is later.

* * * * *

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a)(1), (5) through (9) or (11) apply, or when oral solicitations are used. The exemption from display requirements does not relieve the contracting officer from the responsibility to consider all quotations timely received from responsible sources.

* * * * *

15. Section 5.202 is amended by adding paragraph (a)(13) to read as follows:

**5.202 Exceptions.**

* * * * *

(a) * * *

13. The contract action is for an amount at or below $250,000 and is made through certified FACNET after Governmentwide FACNET has been certified. This exception does not apply when the contract action is not made through certified FACNET. (see Subpart 4.5)

* * * * *

16. Section 5.203 is amended by redesignating paragraphs (b) through (f) as (c) through (g), adding a new paragraph (b) and and revising newly designated (c), (d), and (e) to read as follows:

**5.203 Publicizing and response time.**

* * * * *

(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for each contract action, including actions via FACNET, in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold. The contracting officer should consider the circumstances of the individual procurement such as the complexity, commerciality (see Part 12), availability, and urgency when establishing the solicitation response time.

(c) Agencies shall allow at least a 30 day response time for receipt of bids or proposals from the date of issuance of a solicitation if the contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies shall allow at least a 45 day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development if the contract action is expected to exceed the simplified acquisition threshold.

* * * * *

17. Section 5.205 is amended by revising paragraph (d)(1) to read as follows:

**5.205 Special situations.**

* * * * *

(d) * * *

(1) Except when exempted by 5.202, synopsize each proposed contract action for which the total fee (including phases and options) is expected to exceed $25,000. Reference shall be made to the appropriate CBD Numbered Note.

* * * * *

18. Section 5.207 is amended by redesignating paragraphs (c)(2)(xi) through (c)(2)(xv) as (c)(2)(xii) through (c)(2)(xvi), adding new paragraph (c)(2)(xi), and revising newly redesignated (c)(2)(xiv) to read as follows:

**5.207 Preparation and transmittal of synopses.**

* * * * *

(c) * * *

(2) * * *

(xi) For a contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, enter (A) a description of the procedures to be used in awarding the contract (e.g., request for quotation or solicitation) and (B) the anticipated award date.

* * * * *

(xiv) In the case of noncompetitive contract actions insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

* * * * *

19. Section 5.301 is amended by adding a new (b)(7) to read as follows:

**5.301 General.**

* * * * *

(b) * * *

(7) The contract action is for an amount greater than $25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been made through FACNET.

* * * * *

20. Section 5.303 is amended by revising the introductory text of paragraph (b) to read as follows:

**5.303 Announcement of contract awards.**

* * * * *

(b) *Local announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold in 13.000, they shall include—

* * * * *

21. Section 5.503 is amended by revising paragraph (c)(1), to read as follows:

**5.503 Procedures.**

* * * * *

(c) *Forms.* (1) When contracting directly with the media for advertising, contracting officers:

(i) Shall use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the simplified acquisition threshold; or

(ii) May use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the threshold for use of simplified acquisition procedures (see Part 13).

* * * * *

## PART 6—COMPETITION REQUIREMENTS

22. Section 6.001 is amended by revising paragraph (a) to read as follows:

**6.001 Applicability.**

* * * * *

(a) Contracts awarded using the simplified acquisition procedures of Part 13;

* * * * *

## PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

23. Section 8.203–1 is amended by revising paragraph (a)(1) to read as follows:

### 8.203–1 Contract clause and solicitation provision.

(a) * * *

(1) Contract actions not exceeding the simplified acquisition threshold under Part 13;

* * * * *

## PART 9—CONTRACTOR QUALIFICATIONS

* * * * *

24. Section 9.405–2 is amended by revising the second sentence of paragraph (b) introductory text to read as follows:

### 9.405–2 Restrictions on subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of the simplified acquisition threshold with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

25. Section 9.409 is revised to read as follows:

### 9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibilities Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.209–6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds the simplified acquisition threshold.

26. Section 9.507–1 is amended by revising paragraph (c) to read as follows:

### 9.507–1 Solicitation provisions.

* * * * *

(c) The contracting officer shall insert the provision at 52.209–8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed the simplified acquisition threshold.

* * * * *

## PART 13—SIMPLIFIED ACQUISITION PROCEDURES

27. 13.000 is revised to read as follows.

### 13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction and research and development, the aggregate amount of which does not exceed the simplified acquisition threshold (see 13.103(b)). See 36.602–5 for simplified procedures to be used when acquiring architect-engineering services.

28. 13.101 is amended by revising the definitions of ''bulk funding,'' ''delivery order,'' and ''purchase order,''; removing the definitions of ''small purchase,'' and ''small purchase procedures,'' and adding, in alphabetical order, definitions for ''imprest fund,'' ''simplified acquisition procedures,'' and ''simplified acquisition threshold''.

### 13.101 Definitions.

''Bulk funding,'' means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligation authority on each purchase document.

''Delivery Order,'' means an order for supplies or services placed against an established contract or with Government sources of supply.

* * * * *

''Imprest Fund,'' means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

* * * * *

''Purchase order,'' as used in this part, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

''Simplified acquisition procedures,'' means the methods prescribed in this part for making purchases of supplies or services using imprest funds, purchase orders, blanket purchase agreements, governmentwide commercial purchase cards, FACNET or any other appropriate authorized method. Contracting Officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of Part 13. For example, the procedures of other FAR Parts may, as appropriate, be adapted for use in awarding contracts under this part. Other FAR Parts that may be adapted include, but are not limited to, (1) Part 14, Sealed Bidding; (2) Part 15, Contracting by Negotiation; (3) Part 12, Acquisition of Commercial Items; or (4) Part 36, Construction and Architect-Engineer Contracts, including the use of Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

''Simplified acquisition threshold,'' means $100,000 (but see 13.103(b)). In the case of any DoD acquisition to be awarded and performed, or purchase to be made, outside the United States in support of a military contingency operation (10 U.S.C. 101(a)(13)), the term means $200,000.

29. 13.102 is revised to read as follows:

### 13.102 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to (a) reduce administrative costs; (b) improve opportunities for small business, small disadvantaged business, and women owned small business concerns to obtain a fair proportion of Government contracts; (c) promote efficiency and economy in contracting; and, (d) avoid unnecessary burdens for agencies and contractors.

30. 13.103 is revised to read as follows:

### 13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold unless requirements can be met by using required sources of supply (see Part 8).

(b) Simplified acquisition procedures may not be used for contract actions exceeding $50,000, and not exceeding the simplified acquisition threshold, unless the contracting activity making the purchase has been certified as having interim FACNET. The contracting activity shall not use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, unless the activity's cognizant agency has certified full FACNET capability pursuant to section 4.505–2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated

to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold shall not be broken down into several purchases that are less than the threshold merely to permit negotiation under simplified acquisition procedures.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) FACNET is the preferred means for effecting the acquisition of supplies and services, including construction and research and development, in amounts exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.

(f) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond.

31. 13.104 is revised to read as follows:

**13.104 Procedures.**

(a) Contracting officers shall make awards under this part in the simplified manner that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an ''all-or-none'' basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under simplified acquisition procedures as prescribed in section 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments when using simplified acquisition procedures (see Subpart 25.3).

(f) For proposed purchases covered by this part, see 5.101 for public display requirements.

32. 13.105 is revised to read as follows:

**13.105 Small Business Set-asides.**

(a) Except as provided in paragraphs (b), (c), and (d), of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold (see Subpart 13.6) and not exceeding $100,000, is reserved exclusively for small business concerns and shall be set-aside (see 19.503–3).

(b) The requirements of this section apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000). Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

(c) The requirements of this section do not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts.

(d)(1) Each written solicitation under a small business set-aside shall contain the provision at 52.219–6, Notice of Total Small Business Set-Aside. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.402.

(3) If the contracting officer proceeds with the set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106–2(a)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis.

(4) When proceeding under 13.105(d)(1) or (2), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106–1(a)(7)).

(5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.

(6) Nothing in this section 13.105 shall preclude award, using simplified acquisition procedures, of an acquisition exceeding the micro-purchase threshold and not exceeding $50,000 ($100,000 when FACNET has been implemented) under:

(i) 19.8, Contracting with the Small Business Administration;

(ii) 19.1006(c), emerging small business set-asides; or

(iii) 19.503–2, as a small disadvantaged business set-aside.

(7)(i) Acquisitions exceeding the micro-purchase threshold in Subpart 13.6 and not in excess of $25,000 for supplies and services in the four designated industry groups pursuant to the Small Business Competitiveness Demonstration Program (see 19.10) are set-aside for emerging small businesses.

(ii) For acquisitions exceeding $25,000 in the four designated industry groups pursuant to the Small Business Competitiveness Demonstration Program, see 19.10.

33. 13.106 text is removed and the heading is revised to read as follows:

**13.106 Purchases exceeding the micro-purchase threshold.**

34. 13.106–1 is added to read as follows:

**13.106–1 Soliciting competition, evaluation of quotes, and award.**

(a) *Soliciting competition.* (1) Contracting officers shall solicit a reasonable number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, based, as appropriate on either price alone, or price and other factors (e.g., past performance and quality considered, including the administrative cost of the purchase). Requests for quotations or solicitations shall notify suppliers that award is to be made based on price alone, or price and other factors.

(2) FACNET is the preferred method of soliciting and awarding simplified acquisitions. However, if FACNET is not available, or the contracting officer has made a determination that it is not practicable or cost effective to process a specific purchase via FACNET, or the head of the contracting activity has made a determination that it is not practicable or cost effective to process a class of purchases via FACNET (see Subpart 4.506), quotations may be solicited through other appropriate

means. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not to exceed $25,000 when FACNET is not available or a determination has been made that it is practicable or cost effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed $25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Solicitations for construction contracts over $2,000 shall only be issued electronically or by paper solicitation.

(3) When not soliciting quotations electronically, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the trade area in which the contracting office is located for actions that do not exceed $25,000. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not exceed $25,000. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(4) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source being reasonably available (e.g., only one available source, urgency).

(5) Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, nor shall quotations be solicited on a personal preference basis. If required to maintain a list of sources, new supply sources disclosed through trade journals or other media, shall be continuously reviewed and, if appropriate, added to the list.

(6) Consistent with the applicable principles in 14.407–3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(7)(i) Unless exempted from this requirement by the head of the contracting activity or purchases are made through FACNET, each contracting office should maintain a source list (or lists, if more convenient) and should record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Women-owned small business.

(ii) The status information should be used to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(b) *Evaluation of quotes.* (1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (e.g., past performance, or quality). When evaluating quotations or offers on price and other factors, contractor's quotations or offers shall be evaluated solely on the basis of criteria established in the solicitation. Methods to accomplish this may include, but are not limited to simplified solicitations, streamlined evaluation methods, and award with simplified award documentation. Formal evaluation plans, conduct of discussions and scoring of quotes or offers are not required. Evaluation of other factors does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge, previous experience, or customer surveys.

(2) If suppliers furnish standing price quotations on supplies or services required on an intermittent and recurring basis, the information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. The buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum discounts.

(3) Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(4) Contracting officers shall comply with the policy in section 7.202 relating to economic purchase quantities, when practicable.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and request it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award which was based on other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.

35. 13.106–2 is added to read as follows:

**13.106–2 Data to support purchases.**

(a) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased or any other reasonable basis.

(b) When other than price related factors are considered in selecting the supplier (see 13.106–1(b)(1)), the contracting officer shall document the file to support the final contract award decision.

(c) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(d) Simplified documentation practices should be used. The following illustrate the extent to which quotation information should be recorded.

(1) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) Written (see 2.101) solicitations. Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or

suppliers contacted, and other pertinent data.

(e) Purchasing offices shall retain data supporting purchases using simplified acquisition procedures to the minimum extent and duration necessary for management review purposes. (See Subpart 4.8)

36. 13.107 is revised to read as follows:

**13.107 Solicitation forms.**

(a) Except when quotations are solicited via FACNET or orally, Standard Form 18, Request for Quotations (illustrated in 53.301–18), is available, but not required, for use by all agencies.

(b) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.

(c) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or electronically.

(d) Each agency-designed request for quotations form shall conform with Standard Form 18, insofar as practical.

(e) When using an unsigned electronic purchase orders (see 13.506) for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

37. 13.108 is revised to read as follows:

**13.108 Legal effect of quotations.**

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a suppliers quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(b) When appropriate, the contracting officer may request the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

38. 13.109 is revised to read as follows:

**13.109 Agency use of indefinite delivery contracts.**

Costs and processing time for acquisitions at or below the simplified acquisition threshold may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

39. 13.110 is added to read as follows:

**13.110 Federal Acquisition Streamlining Act of 1994 (FASTA) list of inapplicable laws.**

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontractors) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) & (b) (Anti-Kickback Act of 1986)(Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 27 (Miller Act) (but see Part 28)

(3) 40 U.S.C. 329 (Contract Work Hours and Safety Standards Act—Overtime Compensation)

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988)

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act) (Only the requirement for providing the estimate of material utilized for the performance of the contract which is recovered materials is inapplicable.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees.)

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors.)

(8) 10 U.S.C. 2384(b) (Requirement to Identify Suppliers and Sources of Supply.)

(9) 10 U.S.C. 2393(d) (Prohibition Against Doing Business with Certain Offerors or Contractors.)

(10) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States.)

(11) 10 U.S.C. 2408(a) (Prohibition on Persons Convicted of Defense Related Felonies.)

(12) 10 U.S.C. 2410b (Contractor Inventory Accounting System Standards.)

(13) 10 U.S.C. 2534 (Miscellaneous Procurement Limitations.)

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994 that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services on the list set forth in 13.110(a), unless the FAR Council makes a written determination that it is in the best interests of the government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of 13.110(b) do not apply to laws that:

(1) provide for criminal or civil penalties; or

(2) specifically state that notwithstanding the language of Section 4101, Pub. L. 103–355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator for Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable.

(e) The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

40. Subpart 13.2 is revised to read as follows:

**Subpart 13.2—Blanket Purchase Agreements**

Sec.
13.201 General.
13.202 [Reserved]
13.203 Establishment of Blanket Purchase Agreements.
13.203–1 General.
13.203–2 Clauses.
13.204 Purchases under Blanket Purchase Agreements.
13.205 Review procedures.
13.206 Completion of Blanket Purchase Agreements.

**13.201 General.**

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing ''charge accounts'' with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established at the appropriate level responsible for

providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.

**13.202 [Reserved]**

**13.203 Establishment of Blanket Purchase Agreements.**

**13.203–1 General.**

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (but see 13.204(e)(4)).

(d) BPAs should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous purchases at or below the simplified acquisition threshold are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.

(e) To the extent practical, BPAs for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPAs.

(f) BPAs may also be established with Federal Supply Schedule contractors and GSA Nonmandatory ADP Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) BPAs shall be prepared and issued on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(4) *Notice of individuals authorized to purchase under the BPA and dollar limitations by title of position or name.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(5) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements (except that the statement in paragraph (j)(6)(iii) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPAs in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

**13.203–2 Clauses.**

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the FAR that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

**13.204 Purchases under Blanket Purchase Agreements.**

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the blanket purchase agreement, being a method of

simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those BPAs established in accordance with 13.203–1(f), shall not exceed (i) $50,000, or (ii) $100,000 when the procuring activity has certified interim FACNET (see 13.103(b)).

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.105 and 13.106 also apply to each order under a BPA.

(d) If there is an insufficient number of BPAs to ensure maximum practicable competition for a particular purchase, the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if (i) recurring requirements for the same or similar items or services seem likely, (ii) qualified sources are willing to accept BPAs, and (iii) it is otherwise practical to do so.

(e) Documentation of purchases under BPAs shall be limited to essential information and forms, as follows:

(1) Purchases under BPAs generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a paper document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Documentation of individual purchases under BPAs shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

**13.205 Review procedures.**

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this section are being followed.

**13.206 Completion of Blanket Purchase Agreements.**

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

41. Subpart 13.3 is revised to read as follows:

**Subpart 13.3—Fast Payment Procedure**

Sec.
13.301 General.
13.302 Conditions for use.
13.303 Preparation and execution of orders.
13.304 Responsibility for collection of debts.
13.305 Contract clause.

**13.301 General.**

The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that—

(a) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(b) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

**13.302 Conditions for use.**

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual orders do not exceed $25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the purchasing office at that activity.

(c) Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure (1) documenting evidence of contractor performance under fast payment acquisitions, (2) timely feedback to the contracting officer in case of contractor deficiencies, and (3) identification of suppliers who have a current history of abusing the fast payment procedure. (Also see Subpart 9.1.)

**13.303 Preparation and execution of orders.**

(a) Except when orders are placed via FACNET, orders incorporating the fast payment procedure should be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form (but see 13.204(e) for purchases under BPAs). Orders may be either priced or unpriced.

(b) Contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(1) A requirement that the supplies be shipped transportation or postage prepaid.

(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or

in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers ''FAST PAY.''

**13.304 Responsibility for collection of debts.**

The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

**13.305 Contract clause.**

The contracting officer shall insert the clause at 52.213–1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

42. Subpart 13.4 is revised to read as follows:

**Subpart 13.4—Imprest Fund**

Sec.
13.401 General.
13.402 Agency responsibilities.
13.403 Conditions for use.
13.404 Procedures.

**13.401 General.**

This subpart prescribes policies and procedures for using imprest funds to purchase supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

**13.402 Agency responsibilities.**

Each agency using imprest funds shall—

(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;

(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds; and

(2) Documentation of purchases using imprest funds, including documentation of (i) receipt and acceptance of supplies and services by the Government, (ii) receipt of cash payments by the suppliers, and (iii) cash advances and reimbursements.

**13.403 Conditions for use.**

Imprest funds may be used for purchases when—

(a) the transaction does not exceed $500 or such other limits as have been approved by the agency head;

(b) the use of imprest funds is considered to be advantageous to the Government; and

(c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.402.

**13.404 Procedures.**

(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition.

(b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers (see 13.105).

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary; e.g., if required by the supplier for discount, tax exemption, or other reasons. If a purchase order is used for this purpose, it shall be endorsed ''Payment to be made from Imprest Fund.''

(f) The individual authorized to make purchases using imprest funds shall—

(1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect (i) that an imprest fund purchase has been made, (ii) the unit prices and extensions, (iii) the supplier's name and address, and (iv) the date of anticipated delivery; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving (i) the supplier's name and address, (ii) list and quantity of items, (iii) unit prices and extensions, and (iv) cash discount, if any.

43. Subpart 13.5 is revised to read as follows:

**Subpart 13.5—Purchase Orders**

Sec.
13.501 General.
13.502 Unpriced purchase orders.
13.503 Obtaining contractor acceptance and modifying purchase orders.
13.504 Termination or cancellation of purchase orders.
13.505 Purchase order and related forms.
13.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.
13.505–2 [Reserved]
13.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
13.506 Unsigned electronic purchase orders.
13.507 Provisions and clauses.
13.508 Use of options in acquisitions using simplified acquisition procedures.

**13.501 General.**

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders shall be issued on a fixed-price basis unless otherwise authorized by agency procedures.

(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.407–3.

(c) Purchase orders shall specify the quantity of supplies or services ordered.

(d) Inspections under simplified acquisition procedures shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at destination and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(f) Each purchase order shall contain a determinable date by which delivery

of supplies or performance of services is required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

**13.502 Unpriced purchase orders.**

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is anticipated that the transaction will not exceed

(i) $50,000, or (ii) $100,000 when the contracting activity of an agency has certified interim or full FACNET (see 13.103(b)).

(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(3) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or electronically (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106–2(a)), process the invoice for payment.

**13.503 Obtaining contractor acceptance and modifying purchase orders.**

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

(b) A purchase order may be modified by use of

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an agency-approved automated format; or

(3) A purchase order form, if not prohibited by agency regulations.

(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

**13.504 Termination or cancellation of purchase orders.**

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination action as prescribed by Part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required; i.e., the purchase order shall be considered canceled.

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by Part 49.

**13.505 Purchase order and related forms.**

**13.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.**

(a) Optional Form 347 (illustrated in 53.302–347) and Optional Form 348 (illustrated in 53.302–348) are multipurpose forms designed for the following:

(1) Negotiated purchases of supplies or services.

(2) Delivery orders.

(3) Inspection and receiving reports.

(4) Invoices.

(b) Agencies may use order forms other than Optional Form 347 and 348 and may print on those forms the clauses they consider to be generally suitable for their purchases using simplified acquisition procedures. The clauses may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.

**13.505–2 [Reserved]**

**13.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.**

(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301–44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(b) Standard Form 44 may be used if all of the following conditions are satisfied:

(1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of a military contingency operation. Agencies may establish higher dollar limitations for specific activities or items.

(2) The supplies or services are immediately available.

(3) One delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of other simplified acquisition methods.

(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

(d) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(e) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

**13.506 Unsigned electronic purchase orders.**

(a) An unsigned electronic purchase order (EPO) may be issued when the following conditions are present—

(1) Its use is more advantageous to the Government than any other simplified acquisition method;

(2) It is acceptable to the supplier;

(3) It is approved by the contracting officer;

(4) It does not require written acceptance by the supplier; and

(5) The purchasing office retains all contract administration functions.

(b) When an unsigned EPO is used—

(1) Appropriate clauses shall be incorporated by reference;

(2) Administrative information that is not needed by the supplier shall be placed only on copies intended for internal distribution;

(3) The same distribution shall be made of the unsigned EPO as is made of signed purchase orders; and

(4) No purchase order form is required.

(c) An unsigned EPO may be unpriced if it meets the conditions in 13.502.

**13.507 Provisions and clauses.**

(a) Each purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213–2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213–3, Notice to Supplier, in unpriced purchase orders.

(d) Pursuant to Pub.L. 103–355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(1) 28.102–4, Miller Act solicitation requirements. However, Part 28 sets forth alternatives to payment bonds as payment protections for suppliers of labor and materials for contracts exceeding $25,000, but not exceeding $100,000.

(2) 52.203–1, Officials Not to Benefit
(3) 52.203–4, Contingent Fee Representation and Agreement
(4) 52.203–5, Covenant Against Contingent Fees
(5) 52.203–6, Restrictions on Subcontractor Sales to the Government
(6) 52.203–7, Anti-Kickback Procedures
(7) 52.215–1, Examination of Records by Comptroller General
(8) 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation
(9) 52.223–5, Certification Regarding a Drug-Free Workplace
(10) 52.223–6, Drug-Free Workplace

**13.508 Use of options in acquisitions using simplified acquisition procedures.**

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of subpart 17.2 are met and that the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

## PART 15—CONTRACTING BY NEGOTIATION

44. Section 15.106–1 is amended by revising paragraph (b)(1) to read as follows:

**15.106–1 Examination of Records clause.**

* * * * *

(b) * * *

(1) The contract amount is at or below the simplified acquisition threshold;

* * * * *

45. Section 15.106–2 is amended by revising the first sentence in paragraph (b) to read as follows:

**15.106–2 Audit-Negotiation clause.**

* * * * *

(b) The contracting officer shall insert the clause at 52.215–2, Audit-Negotiation, in solicitations and contracts when contracting by negotiation, unless the acquisition is made under simplified acquisition procedures. * * *

46. Section 15.401 is amended by revising paragraph (a) to read as follows:

**15.401 Applicability.**

* * * * *

(a) Acquisitions made under simplified acquisition procedures (see Part 13.); and

* * * * *

47. Section 15.602 is amended by revising paragraph (b) to read as follows:

**15.602 Applicability.**

* * * * *

(b) This subpart does not apply to acquisitions made under simplified acquisition procedures (see Part 13.).

48. Section 15.804–2 is amended by revising paragraphs (a)(4) and (5) to read as follows:

**15.804–2 Requiring certified cost or pricing data.**

(a) * * *

* * * * *

(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the simplified acquisition threshold in Part 13.

(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price.

* * * * *

49. Section 15.812–2 is amended by revising paragraph (a)(1) to read as follows:

**15.812–2 Contract clause.**

(a) * * *

(1) Acquisitions at or below the simplified acquisition threshold;

* * * * *

50. Section 15.1001 is amended by revising the first sentence of paragraph (b)(1) and paragraphs (c)(1) introductory text and (3) amended to read as follows:

**15.1002 Notification to unsuccessful offerors.**

* * * * *

(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation not using simplified acquisition procedures in Part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. * * *

* * * * *

(c) *Postaward notices.* (1) After award of contracts resulting from solicitations not using simplified acquisition procedures, the contracting officer shall notify unsuccessful offerors in writing or electronically, unless preaward notice was given under paragraph (b) of this section. The notice shall include—

* * * * *

(3) Upon request, the contracting officer shall furnish the information described in 15.1002(c)(1) (i) through (v) to unsuccessful offerors in solicitations using simplified acquisition procedures in Part 13.

## PART 16—TYPES OF CONTRACTS

51. Section 16.000 is amended by revising the first sentence to read as follows:

**16.000 Scope of part.**

This part describes types of contracts that may be used in acquisitions other than those made under simplified acquisition procedures in Part 13, unless otherwise authorized by agency procedures. * * *

52. Section 16.103 is amended by revising paragraph (d)(1) to read as follows:

**16.103 Negotiating contract type.**

* * * * *

(d) * * *

(1) acquisitions made under simplified acquisition procedures in Part 13, unless otherwise required under agency procedures,

* * * * *

53. Section 16.105 is revised to read as follows:

**16.105 Solicitation provision.**

The contracting officer shall complete and insert the provision at 52.216–1,

Type of Contract, in a solicitation unless it is for:

(a) A fixed-price acquisition made under simplified acquisition procedures (see Part 13) or

(b) Information or planning purposes.

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

54. Section 22.202 is amended in the introductory text by adding the phrase ''except for purchases made at or below the micro-purchase threshold,'' after ''contracts''.

**22.202 Contract clause.**

55. Section 22.305 is amended by revising the first sentence of the introductory text and paragraph (a), removing paragraph (b) and redesignating paragraphs (c) through (h) as (b) through (g) to read as follows:

**22.305 Contract clause.**

The contracting officer shall insert the clause at 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. * * *

(a) Contracts at or below the simplified acquisition threshold.

* * * * *

**22.1006 Contract clauses.**

56. Section 22.1006 is amended by revising the heading to read as set forth above and by removing from the first two sentences of paragraphs (c)(1) and (c)(2) the phrase ''small purchase limitation(s)'' and inserting ''simplified acquisition threshold(s)'' in their places.

## PART 23—ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

57. Section 23.101 is amended by revising the first sentence to read as follows:

**23.101 Applicability.**

This subpart does not apply to contracts below the simplified acquisition threshold or to the use of facilities outside the United States. * * *

58. Section 23.501 is amended by revising paragraph (a) to read as follows:

**23.501 Applicability.**

* * * * *

(a) Contracts at or below the simplified acquisition threshold; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;

* * * * *

59. Section 23.504 is amended by revising the introductory text of paragraph (a) to read as follows:

**23.504 Policy.**

(a) No offeror other than an individual shall be considered a responsible source (see 9.104–1) for a contract that exceeds the simplified acquisition threshold, unless it has certified, pursuant to 52.223–5, Certification Regarding a Drug-Free Workplace by—

* * * * *

60. Section 23.505 is amended by revising paragraph (a)(2) an adding paragraph (c)(4) to read as follows:

**23.505 Solicitation provision and contract clause.**

* * * * *

(a) * * *

(2) Expected to exceed the simplified acquisition threshold if the contract is expected to be awarded to other than an individual; or

* * * * *

(c) * * *

(4) The resultant contract is expected to be at or below the simplified acquisition threshold.

## PART 25—FOREIGN ACQUISITION

61. Section 25.302 is amended by revising paragraph (b)(1) to read as follows:

**25.302 Policy.**

* * * * *

(b) * * *

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold in Part 13.

* * * * *

62. Section 25.703 is amended by revising the third sentence to read as follows:

**25.703 Exceptions.**

* * * The approval level for this exception is the contracting officer for acquisitions at or below the simplified acquisition threshold unless otherwise provided by agency procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head. * * *

## PART 27—PATENTS, DATA, AND COPYRIGHTS

63. Section 27.201–2 is amended by revising paragraph (a) to read as follows:

**27.201–2 Clauses on authorization and consent.**

(a) The contracting officer shall insert the clause at 52–227- 1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.

* * * * *

64. Section 27.202–2 is revised to read as follows:

**27.202–2 Clause on notice and assistance.**

The contracting officer shall insert the clause at 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architech-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

65. Section 27.203–1 is amended by revising paragraph (b)(4) to read as follows:

**27.203–1 General.**

* * * * *

(b) * * *

(4) When the contract is awarded using simplified acquisition procedures.

* * * * *

## PART 28—BONDS AND INSURANCE

66. Section 28.103–2 is amended by revising the first sentence of paragraph (a) to read as follows:

**28.103–2 Performance bonds.**

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. * * *

**28.103–3 Payment bonds.**

67. Section 28.103–3(a) is amended by removing the word ''A'' at the beginning of the paragraph and inserting the phrase ''For acquisitions in excess of the simplified acquisition threshold a'' in its place.

68. Section 28.310 is amended by revising paragraph (a) introductory text to read as follows:

**28.310 Contract clause for work on a Government installation.**

(a) The contracting officer shall insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold in Part 13, and the contract will require work on a Government installation, unless—

* * * * *

## PART 29—TAXES

69. Section 29.401–3 is revised to read as follows:

**29.401–3 Competitive contracts.**

The contracting officer shall insert the clause at 52–229–3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico when a fixed-price contract is contemplated, and the contract is expected to exceed the simplified acquisition threshold in 13.000, unless the clause at 52.229–4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

**29.401–4 [Amended]**

70. Section 29.401–4 is amended by removing the words ''small purchase limitation'' after the words ''exceeds the'' and inserting the words ''simplified acquisition threshold.''

* * * * *

## PART 32—CONTRACT FINANCING

71. Section 32.617 is amended by revising paragraph (a)(1) to read as follows:

**32.617 Contract clause.**

(a) * * *

(1) Contracts at or below the simplified acquisition threshold.

* * * * *

72. Section 32.901 is revised to read as follows:

**32.901 Applicability.**

This subpart applies to all Government contracts (including contracts at or below the simplified acquisition threshold as defined in Subpart 13.1), except contracts with payment penalties established by other governmental authority (e.g., tariffs).

73. Section 32.908 is amended by revising paragraph (c) to read as follows:

**32.908 Contract clause.**

* * * * *

(c) The contracting officer shall insert the clause at 52.232–25, Prompt Payment, in all other solicitations and contracts (including contracts at or below the simplified acquisition threshold in Part 13), except as indicated in 32.901.

* * * * *

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

**36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.515, 36.521, 36.602–5, and 36.702 [Amended]**

74a. Part 36 amended by removing the phrase ''exceed the small purchase limitation'' and inserting ''exceed the simplified acquisition threshold'' in its place in the following locations:

| | | |
|---|---|---|
| 36.502 | 36.509 | 36.515 |
| 36.503 | 36.510 | 36.521 |
| 36.506 | 36.512 | 36.602–5 |
| 36.508 | 36.513(a) | 36.702(b)(2) |

**36.511, 36.701, 36.702 [Amended]**

74b. Part 36 amended by removing the phrase ''exceed the small purchase limitations'' and inserting ''exceed the simplified acquisition threshold'' in the following locations: 36.511, 36.701(b), and 36.702(b)(2).

**36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.521, 36.701, and 36.702 [Amended]**

74c. Part 36 is amended by removing the phrase ''within the small purchase limitation'' and inserting ''at or below the simplified acquisition threshold'' in its place at the following locations: 36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513(a), 36.515, 36.521, 36.602–5, 36.701(c).

**36.511, 36.701, and 36.702 [Amended]**

74d. Part 36 is amended by removing the phrase ''within the small purchase limitations'' and inserting ''at or below the simplified acquisition threshold'' in its place at the following locations: 36.511, 36.701(b), 36.702–(b)(2).

## PART 41—ACQUISITION OF UTILITY SERVICES

75. In 41.201(b) the first sentence is revised to read as follows:

**41.201 Policy.**

* * * * *

(b) Except for acquisitions at or below the simplified acquisition threshold in Part 13, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. * * *

* * * * *

## PART 42—CONTRACT ADMINISTRATION

**42.903 [Amended]**

76. In 42.903 the phrase ''small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place.

**42.1104 [Amended]**

77. In 42.1104(b), the phrase ''Contracts of value less than the small purchase'' is removed and ''Contracts at or below the simplified acquisition threshold'' is inserted in its place.

## PART 43—CONTRACT MODIFICATIONS

**43.205 [Amended]**

78. In section 43.205(d)(2) and (e), the phrase ''applicable small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place.

## PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

**44.201–2 and 44.204 [Amended]**

79. In sections 44.201–2(b) and 44.204(e), the phrase ''small purchase limitation is removed and ''simplified acquisition threshold'' is inserted in its place.

## PART 45—GOVERNMENT PROPERTY

80. Section 45.106 is amended by revising paragraph (e) to read as follows:

**45.106 Government property clauses.**

* * * * *

(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold (but see 13.103(b)), purchase orders for property repair need not include a Government property clause.

* * * * *

## PART 46—QUALITY ASSURANCE

**46.202–1 [Amended]**

81. In section 46.202–1(a), the phrase ''under small purchases'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.301 [Amended]**

82. In section 46.301 in the introductory text the phrase ''within the small purchase limitation'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.302 [Amended]**

83. In the first sentence of section 46.302 the phrase ''small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place; and in the second sentence the phrase ''within the small purchase limitation'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.304 [Amended]**

84. In section 46.304 the phrase ''small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place and the phrase ''within the small purchase limitation'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.307 [Amended]**

85. In Section 46.307(a)(3), the phrase ''small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place; and in paragraph (b) the phrase ''within the small purchase limitation'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.312 [Amended]**

86. In the first sentence of section 46.312 the phrase ''small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place; and in the second sentence the phrase ''within small purchase limitation'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.316 [Amended]**

87. In Section 46.316, the phrase ''small purchase limitation'' is removed and ''simplified acquisition threshold'' is inserted in its place; and in the second sentence the phrase ''within small purchase limitation'' is removed and ''at or below the simplified acquisition threshold'' is inserted in its place.

**46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.**

88. Section 46.404 is amended by revising the heading; removing the words ''small purchases'' in paragraphs (a) and (b)(1) and inserting ''contracts at or below the simplified acquisition threshold'' in their place.

89. Section 46.805 is amended by revising the heading of the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

**46.805 Contract clauses.**

(a) *Contracts that exceed the simplified acquisition threshold in 13.000.* * * *

* * * * *

(b) *Acquisitions at or below the simplified acquisition threshold in 13.000.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold in 13.000. However in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold in 13.000 and obtain any price reduction that is appropriate.

## PART 47—TRANSPORTATION

90. Section 47.104–4(a)(2), is amended by removing the phrase ''small purchases under'' and inserting ''contracts at or below the simplified acquisition threshold in'' in its place; and revising paragraph (b) to read as follows:

**47.104–4 Contract clause.**

* * * * *

(b) The contracting officer may insert the clause at 52.247–1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold in Part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

**47.200 [Amended]**

91. In 47.200(b)(4), remove the phrase ''Small purchases under'' and insert ''Contracts at or below the simplified acquisition threshold in'' in its place.

**47.205 [Amended]**

92. In section 47.205, paragraph (b), remove the phrase ''small purchase limitation'' and insert ''the threshold for use of simplified acquisition procedures in Part 13 '' in its place; and remove the phrase ''the small purchase procedures'' and insert ''simplified acquisition procedures'' in its place.

**47.305–16 [Amended]**

93. In the first sentence of 47.305–16(b)(1) remove the phrase ''awarded under small purchase procedures of'' and insert ''at or below the simplified acquisition threshold'' in its place.

94. Section 47.405 is revised to read as follows:

**47.405 Contract clause.**

The contracting officer shall insert the clause at 52.247–63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13.

95. Section 47.504 is amended by revising paragraph (d) to read as follows:

**47.504 Exceptions.**

* * * * *

(d) Contracts awarded using the simplified acquisition procedures in Part 13.

## PART 49—TERMINATION OF CONTRACTS

**49.504 [Amended]**

96. In section 49.504 at paragraphs (a)(1), (b) and (c)(1) in the first sentence remove the phrase ''small purchase limitation'' and insert ''simplified acquisition threshold'' in its place; and in the second sentence remove the phrase ''not expected to exceed the small purchase limitation'' and insert ''at or below the simplified acquisition threshold;''

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**52.203–6 [Amended]**

97. In the clause at 52.203–6 the date of the clause is revised to read (XXX 1995) and at the end of paragraph (c) add the phrase '', which exceed $100,000.''

**52.203–7 [Amended]**

98. In the clause at 52.203–7 the date of the clause is revised to read (XXX 1995) and at the end of paragraph (c)(5) add the phrase '', which exceed $100,000.''

**52.209–6 [Amended]**

99. In the clause at 52.209–6 the date of the clause is revised to read (XXX 1995) and in the second sentence of paragraph (a) and in paragraph (b) remove the phrase ''small purchase limitation'' and insert ''simplified acquisition threshold.''

100. Sections 52.213–2 and 52.213–3 are amended by revising the introductory paragraphs to read as follows:

**52.213–2 Invoices.**

As prescribed in 13.507(b), insert the following clause:

* * * * *

**52.213–3 Notice to Supplier.**

As prescribed in 13.507(c), insert the following clause in unpriced purchase orders:

* * * * *

**52.215–1 [Amended]**

101. In the clause at 52.215–1 the date of the clause is revised to read (XXX 1995) and in the first sentence of paragraph (c) after the first appearance of ''subcontracts'' add the phrase '', exceeding $100,000,''.

**52.215–2 [Amended]**

102. In the clause in section 52.215–2, the date is revised to read (XXX 1995) and in paragraph (f) remove the phrase ''are over the small purchase limitation'' and insert ''exceed the simplified acquisition threshold'' in its place.

103. Section 52.216–1 is amended by revising the introductory paragraph to read as follows:

**52.216–1 Type of contract.**

As prescribed in 16.105, complete and insert the following provision:

* * * * *

**52.222–4 [Amended]**

104. In the clause at 52.222–4 the date is revised to read (XXX 1995) and in the first sentence of paragraph (e) following ''subcontracts'' the first time it appears add the phrase '', exceeding $100,000,''

105. Section 52.223–5 is amended in the clause by revising the date and revising paragraph (b) introductory text to read as follows:

**52.223–5 Certification regarding a drug-free workplace.**

* * * * *

**Certification Regarding a Drug-Free Workplace (XXX 1995)**

* * * * *

(b) By submission of its offer, the offeror (other than an individual responding to a solicitation that is expected to exceed the simplified acquisition threshold), certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

* * * * *

**52.227–1 [Amended]**

106. In the clause at section 52.227–1, revise the clause date to read ''(XXX 1995)'' and paragraph (b) remove ''$25,000'' after the word exceed'' and insert ''the simplified acquisition threshold'' in its place; and remove the phrase ''under or over $25,000'' and insert ''including those at or below the simplified acquisition threshold'' in its place.

**52.227–3 [Amended]**

107. In section 52.227–3, Alternate III, revise the clause date to read ''(XXX 1995)'' and remove ''$25,000'' and insert ''the simplified acquisition threshold'' in its place

108. The introductory paragraphs in sections 52.236–2, 52.236–3, 52.236–6, 52.236–8, 52.236–9, 52.236–10, 52.236–11, 52.236–12, 52.236–15, 52.236–21, and 52.243–5 are revised to read as follows:

**52.236–2 Differing site conditions.**

As prescribed in 36.502, insert the following clause:

* * * * *

**52.236–3 Site investigation and conditions Affecting the Work.**

As prescribed in 36.503, insert the following clause:

* * * * *

**52.236–6 Superintendence by the contractor.**

As prescribed in 36.506, insert the following clause:

* * * * *

**52.236–8 Other contracts.**

As prescribed in 36.508, insert the following clause:

* * * * *

**52.236–9 Protection of existing vegetation, structures, equipment, utilities, and improvements.**

As prescribed in 36.509, insert the following clause:

* * * * *

**52.236–10 Operations and storage areas.**

As prescribed in 36.510, insert the following clause:

* * * * *

**52.236–11 Use and possession prior to completion.**

As prescribed in 36.511, insert the following clause:

* * * * *

**52.236–12 Cleaning up.**

As prescribed in 36.512, insert the following clause:

* * * * *

**52.236–15 Schedules for construction contracts.**

As prescribed in 36.515, insert the following clause:

* * * * *

**52.236–21 Specifications and drawings for construction.**

As prescribed in 36.521, insert the following clause:

* * * * *

**52.243–5 Changes and changed conditions.**

As prescribed in 43.205(e), insert the following clause:

* * * * *

**52.244–2 [Amended]**

109. In section 52.244–2, Alternate I, revise the parenthetical date to read ''(XXX 1995)'' and in paragraph (a)(2) remove the phrase ''small purchase limitation'' and insert ''simplified acquisition threshold'' in its place.

110. Section 52.244–5 is amended by revising the introductory text and removing paragraphs (a) and (b) to read as follows:

**52.244–5 Competition in subcontracting.**

As prescribed in 44.204(e), insert the following clause:

* * * * *

111. The introductory paragraphs of sections 52.246–1, 52.246–7, 52.246–12, 52.246–16, 52.246–23, 52.246–24, and 52.246–25 are revised to read as follows:

**52.246–1 Contractor inspection requirements.**

As prescribed in 46.301, insert the following clause:

* * * * *

**52.246–7 Inspection of research and development-fixed price.**

As prescribed in 46.307(a), insert the following clause:

* * * * *

**52.246–12 Inspection of construction.**

As prescribed in 46.312, insert the following clause:

* * * * *

**52.246–16 Responsibilities for suppliers.**

As prescribed in 46.316, insert the following clause:

* * * * *

**52.246–23 Limitation of liability.**

As prescribed in 46.805, insert the following clause:

* * * * *

**52.246–24 Limitation of liability-high-value items.**

As prescribed in 46.805, insert the following clause:

* * * * *

**52.246–25 Limitation of liability-services.**

As prescribed in 46.805, insert the following clause:

* * * * *

112. Section 52.247–1 is amended by adding the introductory paragraph and removing paragraphs (a) and (b) to read as follows:

**52.247–1 Commercial bill of lading notations.**

As prescribed in 47.104–4, insert the following clause:

* * * * *

**52.247–64 [Amended]**

113. In the clause at section 52.247–64, the date is revised to read ''(XXX 1995)''; in paragraph (d) remove the words ''small purchases'' and insert ''contracts at or below the simplified acquisition threshold'' in their place; and in paragraph (e)(1), remove the words ''Small purchases'' and insert ''Contracts at or below the simplified acquisition threshold'' in their place.

114. In sections 52.249–8, 52.249–9, and 52.249–10 the introductory paragraphs are revised to read as follows:

**52.249–8 Default (Fixed-price supply and service).**

As prescribed in 49.504(a)(1), insert the following clause:

* * * * *

**52.249–9 Default (Fixed-price research and development).**

As prescribed in 49.504(b), insert the following clause:

* * * * *

**52.249–10 Default (Fixed-price construction).**

As prescribed in 49.504(c)(1), insert the following clause:

* * * * *

## PART 53—FORMS

115. Section 53.213 is amended by revising the heading, the introductory paragraph, and paragraphs (a), (c), and (e)(1) to read as follows:

**53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).**

The following forms are prescribed as stated below for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services;

(a) SF 18 (Rev. 5/93), Request for Quotations. SF 18 prescribed in 53.215–1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505–3.

* * * * *

(e) * * *

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505–1(a)(2).

* * * * *

116. Section 53.215–1 is amended by revising the introductory paragraph to read as follows:

**53.215–1 Solicitation and receipt of proposals and quotations.**

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

* * * * *

[FR Doc. 95–5451 Filed 3–3–95; 8:45 am]

BILLING CODE 6820–34–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53

**[FAR Case 91–104]**

### Federal Acquisition Regulation; Electronic Contracting

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of electronic commerce/electronic data interchange in Government contracting. This regulatory action was subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

**DATES:** Comments should be submitted to the FAR Secretariat at the address shown below on or before May 5, 1995, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 91–104 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR Case 91–104.

**SUPPLEMENTARY INFORMATION:**

### A. Background

A proposed rule was published in the **Federal Register** at 58 FR 69588, December 30, 1993. The rule proposed amendments to the FAR to remove any barriers to the use of electronic data interchange in Government contracting. Thirty-six comments from ten respondents were received during the public comment period. After evaluating the public comments, the Councils agreed to publish another proposed rule, because significant changes to the rule published on December 30, 1993, were deemed to be necessary. The changes include:

—Revision of the definition of ''in writing'' or ''written'' at 2.101 to include electronically transmitted and stored information.

—Revision of the definition of ''signature'' at 2.101 for clarity and to include electronic symbols.

—Addition of a definition of ''electronic commerce'' at 4.301.

—Amendment of section 5.101 to permit the use of electronic dissemination, available to the public at the contracting office, to satisfy the requirement for public display of proposed contract actions.

—Amendment of section 5.102 to permit contracting officers to furnish solicitations directly to the electronic address of a small business concern.

—Amendment of sections 12.103, 14.304–1, 52.212–1, 52.212–2, 52.214–7, 52.214–23, 52.214–32, 52.214–33, 52.215–10, and 52.215–36 to accommodate the use of electronic systems which batch-process communications overnight and, therefore, require receipt of information one day in advance to ensure timely delivery to the designated address.

—Revision of paragraph (a) of section 14.205–1 to eliminate the requirement

for establishment of solicitation mailing lists when using electronic commerce methods which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity.

—Addition of new regulations at 14.406 and 15.607(d) to establish procedures for handling unreadable electronic bids and proposals.

This proposed rule and the proposed rule published under FAR Case 94–770, Simplified Acquisition Procedures/FACNET, are interdependent and are meant to be considered jointly.

**B. Regulatory Flexibility Act**

The proposed rule is expected to have a positive impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it encourages broader use of electronic contracting, thereby improving industry access to Federal contracting opportunities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the FAR Secretariat. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 91–104) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53:**

Government procurement.

Dated: February 21, 1995.

**C. Allen Olson,**

*Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definitions, ''In writing'' or ''written'' and ''Signature'' or ''signed'' to read as follows:

**2.101 Definitions.**

* * * * *

*In writing* or *written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

* * * * *

*Signature* or *signed* means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

3. Section 4.101 is revised to read as follows:

**4.101 Contracting officer's signature.**

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

**4.201 [Amended]**

4. Section 4.201 is amended in paragraph (a) by removing the parenthetical ''(see 4.101(b)),''; in paragraph (b)(1) by removing the parenthetical ''stamped 'DUPLICATE ORIGINAL,' see 4.101(b))''; and in paragraph (d) by revising the parenthetical to read ''(see 30.601(b))''.

5. Section 4.500, as proposed to be added in FAR Case 94–770 published elsewhere in this issue of the **Federal Register**, is amended by adding, in alphabetical order, definitions for ''Electronic commerce'' and ''Electronic data interchange'' to read as follows:

**4.500 Definitions.**

*Electronic commerce* means a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques for accomplishing business transactions. The use of terms commonly associated with paper transactions (e.g., ''copy'', ''document'', ''page'', ''printed'', ''sealed envelope'' and ''stamped'') shall not be interpreted to restrict the use of electronic commerce.

*Electronic data interchange* means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

## PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.101 is amended by adding a new last sentence to paragraph (a)(2) introductory text and by adding paragraph (a)(2)(iv) to read as follows:

**5.101 Methods of disseminating information.**

* * * * *

(a) * * *

(2) * * * Electronic dissemination available to the public at the contracting office may be used to satisfy the public display requirement.

* * * * *

(iv) Contracting offices utilizing electronic systems for public posting shall periodically publicize the methods for accessing such information.

* * * * *

7. Section 5.102(a)(4)(i) is revised to read as follows:

**5.102 Availability of solicitations.**

(a) * * *

(4) * * *

(i) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

* * * * *

8. Section 5.207 is amended by adding a new paragraph (c)(2)(xvi) to read as follows:

**5.207 Preparation and transmittal of synopses.**

* * * * *

(c) * * *

(2) * * *

(xvi) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

* * * * *

## PART 7—ACQUISITION PLANNING

**7.304 [Amended]**

9. Section 7.304(b)(3) is amended in the first sentence by adding '', or

electronic equivalent,'' after the word ''envelope''.

10. Section 7.306(a)(1)(i) is revised to read as follows:

**7.306 Evaluation.**

* * * * *

(a)(1) * * *

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

* * * * *

## PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

11. Section 8.405–2 is amended by revising the first sentence of the introductory text to read as follows:

**8.405–2 Order placement.**

Ordering offices may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. * * *

* * * * *

**8.705–3 [Amended]**

12. Section 8.705–3(a) is amended in the first sentence by removing the word ''letter'' and inserting ''written'' in its place.

## PART 9—CONTRACTOR QUALIFICATIONS

**9.206–3 [Amended]**

13. Section 9.206–3(b) is amended in the first sentence by removing ''requested copies of the solicitation'' and inserting ''expressed interest in the acquisition'' in its place.

## PART 12—CONTRACT DELIVERY OR PERFORMANCE

14. Section 12.103(e) is revised to read as follows:

**12.103 Supplies or services.**

* * * * *

(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding 5 calendar days (as representing the normal time for arrival through ordinary mail). If the contract or notice of award will be transmitted electronically, (1) the solicitation shall so state; and (2) the contracting officer shall evaluate delivery schedule based on the date of contract receipt or notice of award, by adding one working day. (The term ''working day'' excludes weekends and U.S. Federal holidays.) If the offered delivery date computed with mailing or transmittal time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

## PART 14—SEALED BIDDING

15. Section 14.201–6(e)(1) is revised to read as follows:

**14.201–6 Solicitation provisions.**

* * * * *

(e) * * *

(1) 52.214–9, Failure to Submit Bid, except when using electronic data interchange methods not requiring solicitation mailing lists; and

* * * * *

**14.202–1 Bidding time.**

16. Section 14.202–1(b)(6) is amended by removing the word ''mailing'' and inserting ''transmittal'' in its place.

17. Section 14.202–2(a)(1) is revised to read as follows:

**14.202–2 Telegraphic bids.**

(a) * * *

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or

* * * * *

18. Section 14.202–8 is added to read as follows:

**14.202–8 Electronic bids.**

In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

19. Section 14.203–1 is revised to read as follows:

**14.203–1 Transmittal to prospective bidders.**

Invitations for bids or presolicitation notices shall be transmitted as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by electronic data interchange or international air mail if security classification permits.

20. Section 14.205–1(a) is revised to read as follows:

**14.205–1 Establishment of lists.**

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when (1) the requirements of the contracting office can be obtained through use of the simplified acquisition procedures (see Part 13), (2) the requirements are nonrecurring, or (3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity. Lists may be established as a central list for use by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

* * * * *

21. Section 14.209(b) is amended by adding a second sentence to read as follows:

**14.209 Cancellation of invitations before opening.**

* * * * *

(b) * * * For bids received electronically, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

* * * * *

22. Section 14.301 is amended by adding paragraph (e) to read as follows:

**14.301 Responsiveness of bids.**

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

23. Section 14.303 is amended by revising the first sentence of paragraph (a) and adding (c) to read as follows:

**14.303 Modification or withdrawal of bids.**

(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. * * *

* * * * *

(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

24. Section 14.304–1 is amended by removing the word ''either'' at the end of the paragraph (a) introductory text, by removing the world ''or'' at the end of paragraph (a)(2), by removing the period at the end of paragraph (a)(3) and inserting ''; or'' in its place, and by adding paragraph (a)(4) to read as follows:

**14.304–1 General.**

* * * * *

(a) * * *

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 PM one working day prior to the date specified for receipt of bids.

* * * * *

25. Section 14.401(a) is amended by revising the second sentence to read as follows:

**14.401 Receipt and safeguarding of bids.**

(a) * * * Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. * * *

* * * * *

26. Section 14.402–3(a)(1) is revised to read as follows:

**14.402–3 Postponement of openings.**

(a) * * *

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due); or

* * * * *

**14.406 through 14.408 [Redesignated as 14.407 through 14.409; new 14.406 added.]**

27. Sections 14.406, 14.406–1 through 14.406–4; 14.407, 14.407–1 through 14.407–8; and 14.408, 14.408–1 and 14.408–2 are redesignated as 14.407, 14.407–1 through 14.407–4; 14.408, 14.408–1 through 14.408–8; and 14.409, 14.409–1 and 14.409–2, respectively, and a new section 14.406 is added to read as follows:

**14.406 Receipt of an unreadable electronic bid.**

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

27A. Section 14.407–2 is amended by adding paragraph (c) to read as follows:

**14.407–2 Apparent clerical mistakes.**

* * * * *

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

## PART 15—CONTRACTING BY NEGOTIATION

28. Section 15.402 is amended by adding paragraph (k) to read as follows:

**15.402 General.**

* * * * *

(k) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use.

29. Section 15.407(d)(3) is revised to read as follows:

**15.407 Solicitation provisions.**

* * * * *

(d) * * *

(3) Insert in RFP's the provision at 52.215–15, Failure to Submit Offer, except when using electronic data interchange methods not requiring solicitation mailing lists; and

* * * * *

30. Section 15.410(b) is revised to read as follows:

**15.410 Amendment of solicitations before closing date.**

* * * * *

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, telegram, or telephone of an extension of the closing date. Telephonic and telegraphic notices shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

* * * * *

31. Section 15.412 is amended by revising the heading and adding paragraph (h) to read as follows:

**15.412 Late proposals, modifications, and withdrawals of proposals.**

* * * * *

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

32. Section 15.607 is amended by adding paragraph (d) to read as follows:

**15.607 Disclosure of mistakes before award.**

* * * * *

(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence—

(1) Of the content of the proposal as originally submitted; and

(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling.

**14.407–1, 14.407–3, 14.407–4, 14.408–6, 14.409, 15.607, 15.608 [Amended]**

33. In addition to the amendments set forth above, newly-redesignated sections 14.407 through 14.409, 15.607, and 15.608 are further amended by updating the internal references as follows:

| Section | Remove | Insert |
|---|---|---|
| 14.407–1 | 14.406 | 14.407 |
| 14.407–3 intro. text | 14.406–3 | 14.407–3 |
| | 14.406–2 | 14.407–2 |
| 14.407–3 (e), (h) & (i). | 14.406–3 | 14.407–3 |
| 14.407–4(f) | 14.406–4 | 14.407–4 |
| 14.408–6(c) | 14.407–6 | 14.408–6 |
| 14.409–2 | 14.408–1 | 14.409–1 |
| 15.607(a) | 14.406 | 14.407 |
| 15.608(c) | 14.407–3 | 14.408–3 |

## PART 16—TYPES OF CONTRACTS

34. Section 16.506(c) is revised to read as follows:

**16.506 Ordering.**

* * * * *

(c) Orders may be placed by electronic commerce methods when permitted under the contract.

* * * * *

## PART 32—CONTRACTING FINANCING

35. Section 32.503–1(b) is revised to read as follows:

**32.503–1 Contractor requests.**

* * * * *

(b) Comply with the instructions appropriate to the applicable form, and the contract terms; and

* * * * *

## PART 45—GOVERNMENT PROPERTY

36. Section 45.606–5 is amended by revising in paragraphs (b) (3) and (4) to read as follows:

**45.606–5 Instructions for preparing and submitting schedules of contractor inventory.**

* * * * *

(b) * * *

(3) The standard inventory schedule forms may be electronically reproduced by contractors pursuant to 53.105, provided no change is made to the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

(4) The appropriate continuation sheet shall be used when more space is needed.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

37. Section 52.212–1 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing ''(R 7–104.92(b) 1974 APR)'', ''(R 1–1.316–5)'' and ''(R 1–1.316–4(c))'' after ''(End of clause)'' to read as follows:

**52.212–1 Time of Delivery.**

* * * * *

TIME OF DELIVERY (DATE)

* * * * *

(b) * * * However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award though the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term ''working day'' excludes weekends and U.S. Federal holidays.) * * *

(End of clause)

* * * * *

38. Section 52.212–2 is amended by revising the date in the heading of the clause and the fourth sentence in paragraph (b), and removing ''(R 7–104.92(c) 1974 APR)'', ''(R 1–1.316–5(c))'' and ''(R 1–1.316–4(c))'' following ''(End of clause)'' to read as follows:

**52.212–2 Desired and Required Time of Delivery.**

* * * * *

DESIRED AND REQUIRED TIME OF DELIVERY (DATE)

* * * * *

(b) * * * However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term ''working day'' excludes weekends and U.S. Federal holidays.) * * *

(End of clause)

* * * * *

39. Section 52.214–5 is amended by revising the date in the heading of the provision and adding paragraph (d) to read as follows:

**52.214–5 Submission of Bids.**

* * * * *

SUBMISSION OF BIDS (DATE)

* * * * *

(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

40. Section 52.214–7 is amended by revising the date in the provision heading, at the end of paragraph (a)(2) by removing ''or,'' at the end of paragraph (3) by removing the period and inserting ''; or'' in its place, and adding paragraph (4) to read as follows:

**52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.**

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (DATE)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the government not later than 5:00 PM, one working day prior to the date specified for receipt of bids.

* * * * *

(End of provision)

41. Section 52.214–9 is amended by revising the introductory text, the date in the heading of the provision, the second sentence of the provision, and removing ''(R SF 33A, Para 6, 1978 JAN)'' after ''(End of provision)'' to read as follows:

**52.214–9 Failure to Submit Bid.**

As prescribed in 14.201–6(e)(1), insert the following provision in invitations for bids:

FAILURE TO SUBMIT BID (DATE)

* * * Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. * * *

(End of provision)

42. Section 52.214–23 is amended by revising the date in the heading of the provision, at the end of paragraph (3) by removing the period and adding ''or'' in its place, redesignating paragraph (4) as (5), and adding a new paragraph (4) to read as follows:

**52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding.**

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (DATE)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 PM one working day prior to the date specified for receipt of technical proposals; or

* * * * *

43. Section 52.214–32 is amended by revising the date in the heading of the provision and paragraph (a) to read as follows:

**52.214–32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).**

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (DATE)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term ''working day'' excludes weekends and U.S. Federal holidays.

* * * * *

44. Section 52.214–33 is amended by revising the date in the heading of the provision, at the end of paragraph (a)(1) by removing the word ''or'', redesignating paragraph (2) as (3), and adding a new paragraph (2) to read as follows:

**52.214–33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).**

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (DATE)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one

working day prior to the date specified for receipt of technical proposals. The term ''working day'' excludes weekends and U.S. Federal holidays; or

* * * * *

45. Section 52.215–9 is amended by revising the date in the provision heading, redesignating paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

**52.215–9 Submission of Offers.**

* * * * *

SUBMISSION OF OFFERS (DATE)

* * * * *

(d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

* * * * *

46. Section 52.215–10 is amended by revising the introductory text and the date in the provision heading, at the end of (a)(3) by removing the word ''or'', redesignating paragraph (4) as (5), and adding a new paragraph (4) to read as follows:

**52.215–10 Late Submissions, Modifications, and Withdrawals of Proposals.**

As prescribed in 15.407(c)(6), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (DATE)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

* * * * *

47. Section 52.215–15 is revised to read as follows:

**52.215–15 Failure to Submit Offer.**

As prescribed in 15.507(d)(3), insert the following provision:

FAILURE TO SUBMIT OFFER (DATE)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

48. Section 52.215–36 is amended by revising the date in the provision heading, at the end of paragraph (a)(1) by removing the word ''or'', redesignating paragraph (2) as (3), and adding a new paragraph (2) to read as follows:

**52.215–36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).**

* * * * *

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) (DATE)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

* * * * *

(End of provision)

**52.223–3 [Amended]**

49. Section 52.223–3, Alternate I, is amended by removing ''(NOV 1991)'' and inserting ''(DATE)'' in its place, and in the second sentence of paragraph (i)(1) by removing the word ''mail'' and inserting ''transmit'' in its place.

50. Section 52.242–12 is amended by revising the date in the clause heading and everything after the first sentence of the clause to read as follows:

**52.242–12 Report of Shipment (REPSHIP).**

* * * * *

REPORT OF SHIPMENT (REPSHIP) (DATE)

* * * The Government bill of lading, commercial bill of lading or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer by United States mail or authorized electronic commerce method.

(End of clause)

51. Section 52.242–13 is amended by revising the date in the clause and the first sentence of the clause to read as follows:

**52.242–13 Bankruptcy.**

* * * * *

BANKRUPTCY (DATE)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. * * *

52. Section 52.247–48 is amended by revising the introductory text, the date in the clause heading, redesignating the introductory text of the clause and paragraphs (a), (b), and (c) as (a), (1), (2), and (3), respectively, adding new paragraph (b), and removing ''(R 7–104.76 1968 JUN)'' after ''(End of clause)'' to read as follows:

**52.247–48 F.o.b. Destination—Evidence of Shipment.**

As prescribed in 47.305–4(c), insert the following clause:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (DATE)

* * * * *

(b) Electronic transmission of the information required by paragraph (a) of this clause is acceptable.

(End of clause)

## PART 53—FORMS

53. Section 53.105 is revised to read as follows:

**53.105 Computer generation.**

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided:

(1) the form is in an electronic format that complies with Federal Information Processing Standards, or

(2) there is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall either comply with Federal Information Processing Standards or shall retain the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

[FR Doc. 95–4698 Filed 3–3–95; 8:45 am]

BILLING CODE 6820–34–M

federal register

Monday
March 6, 1995

## Part X

# The President

## Memorandum of March 2, 1995

**Federal Register**
Vol. 60, No. 43
Monday, March 6, 1995

# Presidential Documents

**Title 3—**

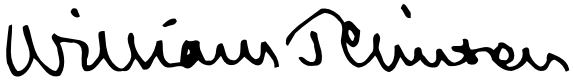
## The President

**Memorandum of March 2, 1995**

**Memorandum for the Secretary of Transportation [and] the United States Trade Representative**

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10922(*l*) (1) and (2), I hereby extend for an additional 2 years both the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1996, unless earlier revoked or modified.

This memorandum shall be published in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 2, 1995.*

[FR Doc. 95–5600
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Monday, March 6, 1995

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| 1200–End, 6 (6 Reserved) | (869–022–00006–3) | 23.00 | Jan. 1, 1994 |
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| 140–199 | (869–022–00044–6) | 13.00 | Jan. 1, 1994 |
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| 200–End | (869–022–00104–3) | 13.00 | Apr. 1, 1994 |
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| 500–899 | (869–022–00109–4) | 35.00 | July 1, 1994 |
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| **36 Parts:** | | | |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[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, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.